# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~371~~. 97.

ALABAMA AND VICKSBURG RAILWAY COMPANY AND ROBERT H. THOMPSON AND THOMAS A. McWILLIE, ITS SURETIES, PLAINTIFFS IN ERROR,

*vs.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED AUGUST 14, 1905.

(19,873.)

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1 ALABAMA & VICKSBURG RAILWAY CO.
*vs.*
RAILROAD COMMISSION OF MISSISSIPPI.

Filed Sept. 14th, 1904.

GEO. C. MYERS, Clerk.
J. R. McDOWELL, D. C.

2 Supreme Court of Mississippi, April Term, A. D. 1905, Monday, April 3rd, 1905.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, held in the court room, at the capitol, in the city of Jackson, on the first Monday in April, A. D. 1905.

Present: The Honorable Albert H. Whitfield, chief justice, and the Honorable S. S. Calhoon, and the Honorable Jeff Truly, associate justices, Geo. C. Myers, clerk and C. L. Johnson, marshal.
Proceedings in the case of—

ALABAMA & VICKSBURG R. R. CO.
*v.*
RAILROAD COMMISSION OF MISSISSIPPI. } No. 11364.

3 Caption.

Pleas and proceedings had and done before the Honorable Robert B. Mayes, chancellor of the fifth chancery district of Mississippi, sitting in vacation in the first district of Hinds county in the city of Jackson, Mississippi, on the 13th day of July, 1904, in the following cause—to-wit:

ALABAMA & VICKSBURG RY. CO.
*v.*
RAILROAD COMMISSION OF THE STATE of Mississippi. } No. 2386. Bill of Complaint.

In the Chancery Court of Hinds County, Mississippi.

The Honorable Robert B. Mayes, chancellor:

1. The complainant shows unto your honor that it is a corporation of the State of Mississippi engaged in the operation of a railroad for the transportation of passengers and freight between the cities of Vicksburg and Meridian in said State, a distance of one hundred and forty miles which constitutes the whole of its line, and that the defendant is a governmental agency of the State of Missis-

sippi for the supervision of carriers, composed of John D. McInnis, Albert Q. May and J. C. Kincannon.

2. The said railroad commission derives its powers from chapter 134 of the Annotated Code of Mississippi of 1892, which said chapter also presribes its duties, and extends from section 4273 to section 4336, both inclusive of said Code.

3. On the 16th day of November, A. D. 1903, the said railroad commission on the petition of the board of trade of said city of Meridian against the opposition and over the protest of com-
4 plainant by its order in writing of said date directed and required complainant to put into effect over its line of road from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both cities, from and after December 8th, 1903, a flat rate of 3½ cents per hundred pounds on grain and grain products and no more.

Complainant files herewith a copy of the record in said matter, including the said order and the pleadings and proceedings preliminary thereto, marked Exhibit A., and prays that the same be taken as a part of this bill.

4. In and by section 4287 of said Code, it is provided that if any railroad shall for its advantage or for the advantage of any connecting line, or for that of any person, locality or corporation make any discrimination in transportation against any person, locality or corporation, unless authorized by said commission, it shall be guilty of extortion and may be punished therefor criminally, besides being liable civilly. By section 4288 of said Code, it is provided that any party injured by such act of discrimination may recover of such railroad twice the damages sustained thereby. By section 4289 of said Code, it is provided that any railroad which shall commit extortion by discrimination shall be guilty of a misdemeanor and on conviction shall be fined not less than $100.00. By section 4290 of said Code, it is provided that every railroad shall furnish to the commission its tariff of charges for transporting passengers and freight from point to point within and from points without to points within, and from points within to points without the State including all joint tariffs with connecting lines, and that the commission shall revise such of said tariffs as are not subject to the exclusive regulation of Congress and determine whether or not and in what particular any of the charges are more than reasonable compensation for the services to be rendered and whether or not discrimination be made improperly against any person, corporation or locality; that it should require the proper corrections and that when the tariffs shall have been corrected, the commission shall append to each its certificate of approval;
5 that the commission shall have power to fix and regulate tariffs of charges of all railroads which fail to furnish their tariffs as required; that in revising, fixing and regulating charges for transportation the commission shall take into consideration the character and nature of the service to be rendered and the entire business of the railroad and its earnings from all kinds of traffic, and shall

so revise, fix and regulate the charges as to allow reasonable compensation for the services to be rendered; that the commission shall exercise a watchful and careful supervision over the tariffs of charges of every railroad and shall revise the same from time to time, as justice to the public and the railroad may require, and shall increase or reduce any of the rates as experience and business operations show to be just; that in fixing joint tariffs of rates for connecting lines, the commission shall determine the proportion to be charged by each of the railroads; and that the commission shall regulate and fix the rates to be charged on short hauls in excess of what may be charged on long hauls, and shall determine in all cases whether the circumstances and conditions be or be not substantially similar.

5. Complainant shows unto your honor that prior to the date of the order aforesaid, it had submitted to the said railroad commission its tariff of charges showing a rate on grain and grain products from point to point on its line of 10 cents per hundred pounds in car-load lots for a distance of 140 miles, the distance from said city of Vicksburg to said city of Meridian, and the said tariff had been approved by said commission.

There are a large number of stations on complainant's line and the rate on grain and grain products from one of the same to another are set out in its said tariff according to mileage. The said rate of 3½ cents per hundred pounds is much less than the rates fixed by said tariff between all other points than Vicksburg and Meridian on the same commodities, which range from 5 cents per hundred pounds in car-load lots for distances of five miles or less to ten cents in car load lots for distances of 150 miles and over 60 miles, and is improperly and illegally discriminative in favor of said two
6 cities against the city of Jackson, and all other intermediate stations. Complainant submits herewith the biennial report of the said commission for the year 1901, and prays that its said tariff of charges and the schedule of its several stations and their distances, one from the other, therein shown *to* be taken as part hereof.

Complainant further shows that said rate ordered as aforesaid is also improperly and illegally discriminative in that no such low rate is fixed upon any other commodity of the same class, between the same points, and that it discriminates against the producer and shipper of native grown corn, the tariff rate on which commodity from Vicksburg and other stations on complainant's line to Meridian still remains far in excess of said rate so ordered and ranges on car-load lots from 4 cents per hundred pounds for distances of 5 miles or less to 10 cents for distances of 150 miles and over 60 miles as by reference to said tariff will fully appear and that it discriminates against complainants as between it and numerous other railroad corporations operating in Mississippi, or none of the line of which having a mileage in said State equal to and greater than that of com-

plainant is there such a low rate on the same commodities for the same distance between points within the State.

Complainant avers on information which it believes to be true and charges the fact to be that the whole proceeding resulting in the making of said order is an undisguised scheme to build up the jobbing trade of the city of Meridian to the detriment and disadvantage of other localities in the State and particularly other stations on complainant's line and by discrimination against them in favor of Meridian, and that the said order is illegal and against the true intent and meaning of said chapter 134 which was especially designed to prevent such discrimination and particularly against that of the said section 4290 of said Code wherein and whereby the said commission are empowered to revise and correct railroad tariffs of charges which constitute a discrimination against any person, corporation or locality, but not so to alter
7 the said approved tariff of charges as the instigation of purely selfish interests, as to change a rate which does not so discriminate into one which does. The said discrimination is all the greater by reason of the fact that the rate of 3½ cents per hundred pounds fixed by said order does not relate alone to car-load lots as to the higher rates in force for shorter distances, the practice being universal among railroads to charge a less rate per hundred pounds on shipments in car-load lots than on shipments in lots less than one car-load *lots than on shipments in lots less than one car-load.* As will be seen by reference to the writing accompanying the petition of said Meridian board of trade, and purporting to be explanatory thereof, the request for a rate openly discriminative is sought to be justified on the untenable theory of some natural advantage in the location of Meridian, as to which no proof was offered to the commission, the fact in reality not being susceptible of proof by reason of its non-existence. The said railroad commission is an administrative and not a judicial agency of the State and even as to matters committed to its cognizance its findings are not conclusive but only *prima facie* correct.

6. Complainant further shows unto your honor that the said rate fixed by said order is unreasonably low in this, that complainant cannot comply with the said order and put said rate in force on its line without incurring a loss on every shipment transported on said rate and complainant therefore avers and charges that the said order is illegal and contrary to the said section 4290 of said Code wherein and whereby the said commission is required in revising and fixing the charges of railroads to allow reasonable compensation for the services to be rendered, and is also illegal for the further reason that so to require the complainant to transport freight without reward is in violation of section 17 of the constitution of 1890 of the State of Mississippi, wherein it is provided that "private property
8 shall not be taken or damaged for public use, except on du compensation being first made to the owner or owners thereof," and by amendment V of the Constitution of the United State,

wherein it is provided as follows * * * "nor shall private property be taken for public use without just compensation."

7. Complainant further avers that it has no net income from traffic from point to point within the State of Mississippi after deducting the cost of maintenance and operation properly imputable to such traffic, and that its net profit arises entirely out of its interstate business, and complainant, for a more detailed statement of such income and cost of maintenance and operation, refers to its answer to the rule for information made upon it by said commission contained in the record, Exhibit A, hereto, the several matters appearing in which, it prays be taken as if herein repeated and set forth. And that the said rate is illegal both because the same is unreasonably low and because the same must of necessity operate as a burden upon complainant's interstate traffic and is in violation of clause 3 of section 8 of article 1 of the Constitution of the United States wherein it is provided that the Congress shall have the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes." and it is also in violation of amendment XIV to the Constitution of the United States in that its enforcement would deprive complainant of its property without due process of law and in that it denies to complainant the equal protection of the laws.

8. Complainant further avers on information which it believes to be true and charges the fact to be, that the undisguised scheme of said Meridian board of trade sought to be effectuated through its said proceeding in reality contemplates and involves the regulation of interstate commerce apart from the fact that any burden laid upon complainant's domestic traffic must be borne by its interstate traffic, the fundamental idea of their said proceeding being that a low rate by barge can be secured on grain and grain products down the Mississippi river to Vicksburg from St. Louis, and other western
9 cities on that river or rivers that are affluents thereof, that by a colorable device at Vicksburg commodities so transported and destined for Meridian can be given the form of a domestic shipment from Vicksburg to Meridian, and that the ultimate effect of this procedure, the only one really desired and contemplated by the said petitioners will be the reduction of the interstate rate from said western cities to Meridian by the Mobile & Ohio Railroad Company and the Southern Railway Company and other companies having lines to Meridian and engaged in such interstate business, your complain-t being merely the victimized agent employed in this coercive undertaking, a club as it were to beat down interstate rates on other lines.

9. Complainant further avers and charges that by reason of the fact that the said order is as hereinbefore stated far lower than any rate on the same commodities in force or directed to be put in force on any of the numerous other railway lines in Mississippi for the same distance between points thereon in said State, the said order is illegal and void because it violates amendment XIV to the Constitution

of the United States in that it denies to complainant the equal protection of the laws.

10. Complainant further avers and charges that the said order is illegal and void because the said section 4290 of said Code under authority of which said order was made, prescribes that in fixing rates the commission shall take into consideration the entire business of the railroad and its earnings from all kinds of traffic, and is void in that it violates clause 3 of section 8 of article I of the Constitution of the United States wherein power is given to the Congress "to regulate commerce with foreign nations and among the several States and with the Indians tribes."

11. Under section 4329 of said Code, complainant is liable to a fine of $500 for each and every failure to comply with the requirements of said order if the same be lawful and reasonable, and it would work great and irreparable injury to complainant to have such fines accumulate while the question of the lawfulness and reasonableness of said order remains undetermined.

The premises considered complainant prays that said railway commission be made a defendant herein and required to answer; that an injunction issue restraining the enforcement of said order by said commission and on final hearing said order be decreed to be illegal and void and for nothing held, and that said injunction be made perpetual. May it please your honor also to grant to complainant the State's writ of spa. directed etc., commanding etc., as in duty bound complainant will ever pray etc.

McWILLIE & THOMPSON,
Solicitors for Complainant.

THE STATE OF LOUISIANA,
Parish of Orleans.

Personally appeared before me, the undersigned notary public, in and for said State and parish, C. C. Harvey, president of The Alabama & Vicksburg Railway Company, the above named complainant, who being duly sworn, deposes and says that the matters and things in the foregoing bill stated as of complainant's knowledge are true and those stated on the information and belief of complainant he verily believes to be true.

Sworn to and subscribed before me this 1st day of December, 1903.

PURNELL M. MILNER,
[L. S.] Notary Public.

To the chancery clerk of Hinds county:

On the filing of the within bill in your office and the execution by the complainant of a bond in the sum of $500.00 with two or more sufficient sureties approved by you, conditioned for the payment of all damages and costs which may be awarded against the complainant, The Alabama & Vicksburg Railway Company, or

which the defendant, The railroad Commission of the State of Mississippi, may suffer or sustain, by reason of the suing out of the injunction herein granted in case the same shall be dissolved, you
11 will issue an injunction against the said defendant in accordance with the prayer of the within bill.

Given under my hand this 3rd day of December 1903.

ROB'T B. MAYES,
Chancellor.

Filed with Exhibit A and injunction and summons issued Dec'r 3rd, 1903.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

EXHIBIT "A."

ALABAMA & VICKSBURG RY. CO.
*vs.*
RAILROAD COMMISSION OF STATE OF MISSISSIPPI. } No. 2386.

MERIDIAN, MISS., Dec. 13, 1902.

To the Mississippi Railroad Commission.

GENTLEMEN: We have been informed that the commission has put in a flat rate of seven (7) cents from Vicksburg to Laurel. After commending your action as reasonable, I have been instructed by my committee to petition your honorable body to make the proportionate rate of three and one half ($3\frac{1}{2}$) cents now in effect from Vicksburg to Meridian an open rate subject to use of all shippers from Vicksburg.

Yours truly,

H. M. THREEFOOT,
Chair. Frt. Com.

12 MERIDIAN, MISS., Feb. 27th, 1903.

The railroad commission, Jackson, Miss.

GENTLEMEN: For the proper understanding of this case, a short history of the part which the rate from the Mississippi river to the city of Meridian has always played is absolutely essential.

During Mr. I. Hardy's management of the traffic department of the old Vicksburg & Meridian railroad, he was quick to see the advantages which must necessarily accrue to an east and west line, as his was from the Mississippi river, which furnished the very cheapest means of transportation from St. Louis and other river markets to Vicksburg, the western terminus of his road. He at once availed himself of the water rate, working in close alliance with the Mississippi Transportation Company, a barge line, and the Anchor line of steamers. On the 20th of April 1887, Mr. E. L. Russell, general counsel for the Mobile & Ohio R. R., presented to the Interstate

Commerce Commission a petition which set forth, among others, the following facts: That the rate then in existence on the Mobile & Ohio R. R. from St. Louis to Meridian rendered it impossible for his road to compete with the rate made by water and rail from St. Louis to Meridian, via the Mississippi river and Vicksburg & Meridian R. R. That it was necessary to reduce *the all* railroad rates from St. Louis to Meridian, to compete with the interstate water and rail rate. That to reduce all of his rates from St. Louis to Meridian, to a point which would compete, would be ruinous to his revenue, and he therefore prayed the Interstate Commerce Commission to allow him to reduce the Meridian rate without changing the intermediate rate. In that petition he laid particular stress upon the fact that the Vicksburg & Meridian road was entirely in the State of Mississippi and therefore was not subject to the control of the national commission. This petition as granted, and the opinion was delivered by Judge Cooley, who admitted the force of Mr. Russell's contention in every particular.

13 After this time, about 1889 or 1890, the Vicksburg & Meridian railroad withdrew the rate from Vicksburg to Meridian, having made a traffic agreement with the Illinois Central and Mobile & Ohio R. R. by which the rates to Meridian and Jackson were advanced and made uniform. The City of Meridian then, through her board of trade, as now, at once petitioned the State commission to compel the Vicksburg & Meridian R. R. to restore the rate from Vicksburg to Meridian to the one formerly made for river shipments and this petition was granted.

So your petitioners would respectfully show that both the National and State commissions have recognized the justice of the contentions which you are again asked to affirm.

Your petitioners would respectfully show that, at all times, from the decision *that* the Interstate Commerce Commission in 1887, until the purchase of the Mobile & Ohio railroad by the Southern Railway Company, the city of Meridian has always had lower rates than intermediate stations. Not through any favor of the managers of the railroad properties as was attempted to be shown in the "Aberdeen Group case" but by virtue of natural situation and rights as defined by the tribunals made to settle these very questions.

Your petitioners would further call your attention to the tremendous results, so far as the commercial interests of the State are concerned, that rest upon your decision. Meridian is not fighting her battle only, but is contending for a principle, the abrogation of which taken away not only from Meridian but from the whole State an advantage assured by geographical situation.

Judge Cooley was, beyond doubt, the greatest jurist ever connected with the Interstate Commerce Commission, and his decisions are today referred to as the very highest authority. Your petitioners have his endorsement of their contention. Why? Because he recognized the fact that Congress in enacting the interstate commerce law, did not intend to rob any place of its natural advantages as a

market. Mr Russell not only demonstrated the natural ad-
14 vantages of Meridian beyond doubt or cavil, but the absolute necessity for rates lower than those to intermediate stations. The State commission at that time composed of Sessions, Kyle and McWillie, followed intelligently and closely Judge Cooley's decision. Why? Because, to do otherwise would make it impossible for any place in the State to distribute goods of the very first importance to the people of the State.

Let it always be borne in mind that this petition granted increases no rate to any point in the State, but simply puts Meridian upon an equal footing with places similarly situated and outside of the State, and thereby creates another market for all points in this territory.

Your petitioners would further show, that in opposing the late petition of the Vicksburg merchants, for an open rate to Meridian, they were induced to this course because they had assurances that the all-rail rate from western points to Meridian would at all times be made to compete with the rates via Vicksburg. This has not been done. The State commission has granted to Laurel and Hattiesburg a rate from Vicksburg of seven cents per hundred pounds on grain and grain product. Of this rate the Alabama & Vicksburg railroad receives three cents per hundred pounds Meridian's petition is for three and one half cents. Surely, if it is proper to grant a rate of seven cents to Hattiesburg and Laurel, it cannot be wrong to grant a rate of 3½ cents to Meridian.

Respectfully,

H. M. THREEFOOT,
Chairman Transportation Committee.

15 THE BOARD OF TRADE OF MERIDIAN
*v.*
ALABAMA & VICKSBURG RAILWAY COMPANY.

The Answer of the Alabama & Vicksburg Railway Co.

To the Hon. Mississippi railroad commission:

1. The rate now in force is not an unreasonable one and the reduction asked for would make the rate unreasonably low.
2. The reduction would operate as an unlawful discrimination in favor of Meridian and against other points in the State.
3. The proposed reduction would be a burden upon and a regulation of interstate commerce.

McWILLIE & THOMPSON,
Solicitors for Respondent.

To the honorable Mississippi railroad commission:

In the Matter of the Application of THE MERIDIAN BOARD OF TRADE for an Order to Compel the Alabama and Vicksburg Railroad Company to Reduce its Freight Rates on Grain and Grain Products from Vicksburg to Meridian.

Your petitioner The Meridian board of trade, respectfully shows that, documentary and other evidence relating to the merits of this matter and material to the cause of your petitioner, and material to a just and proper investigation of this matter by this commission, is solely within the possession, knowledge and control of the said railroad company, and cannot be otherwise obtained than by an order and rule upon said railroad company to produce such evidence at the hearing of this matter.

16 Your petitioner shows that the plea, or answer of the said railroad company to petitioner's said application in this behalf, alleges, in substance, that the present rate on grain and grain products over the road from Vicksburg to Meridian is unreasonable; that the rate request by your petitioner is unreasonable and cannot be adopted by said railroad company because it would be unprofitable and also that it would place a burden upon said railroad company contrary to law. Because of said plea or answer, by said railroad company, and for other good and substantial reasons indicated by the said petition and the said plea, or answer, it is necessary to a just, proper and lawful investigation and judgment in this matter, for the said Alabama & Vicksburg Railroad Company to furnish this commission, and the petitioner, at the hearing of this matter, with the following information and evidence exclusively within its possession, and knowledge and control, to-wit:

1. The cost of its road.
2. The cost of equipping its road.
3. The present actual value of its road.
4. The present actual value of equipment.
5. The gross ton-age of grain and grain products.
6. The gross ton-age of freights annually.
7. The per cent. of gross *grains* received from grain and grain products.
8. The gross receipts from freights at each station from Vicksburg to Meridian, including those two cities, showing what per cent. thereof is from grain and grain products.
9. The passenger receipts between and including both of said cities, showing it from each station.
10. The cost of operation and sustenance in detail and any and all other evidence in the possession, knowledge and control of said railroad company to the extent of making all these matters plain to this commission, to the end that this commission may fairly and justly determine from the best evidence obtainable, whether

17 the prayer of the petition should be granted, or, whether, because of the matters pleaded, the said petition, or application, of the Meridian board of trade should be denied.

Your petitioner prays, therefore, that an order be made, after due notice to the Alabama & Vicksburg Railroad Company, requiring it to file with its said plea, or answer, in this matter, a full, true and correct statement of the evidence aforesaid, and upon refusal to comply with such order, said railroad company be not permitted to further defend the said application.

Your petitioner prays a rule, that justice may be done in this matter requiring the said railroad company to disclose a true and correct account, or statement, of the matters above mentioned; or petitioner prays for such other or further, special or general relief in the premises as the nature of its case may require. To this end petitioner prays that this honorable commission, or the president thereof, fix Saturday, July 20th, 1903, at the office of the commission in the city of Jackson, as the time and place to hear this petition, or such other time and place as may suit the convenience of the commission, and that notice be given the Alabama & Vicksburg Railroad Company accordingly. And as in duty bound petitioner will ever pray.

McCLURG & GARDNER,
For the Petitioner.

The clerk of the Mississippi railroad commission will cause a copy of the foregoing petition, duly certified, to be served upon the Alabama & Vicksburg Railroad Company, notifying it to appear at the office of the commissioner at 10 o'clock a. m. Tuesday July the 7th, 1903, to show cause, if any it can, why the prayer of said petition should not be granted, and also notify all members of the commission to be present.

This July the 19th, 1903.

JNO. D. McINNIS,
President of the Commission.

18 Upon hearing the motion or application filed herein to require the Alabama & Vicksburg Railroad Company to adduce and disclose certain evidence called for, this commission finds and orders as follows:

First. That said Alabama & Vicksburg Railroad Company is a domestic corporation of this State, operating a railroad from Vicksburg to Meridian, wholly within the limits of this State, and is engaged in domestic and interstate transportation of persons and property common to the railroad business.

Second. That said railroad company has answered the petition herein for a lower rate than is now in force over its road by claiming (1) that the rate now in force is not an unreasonable one and that the reduction asked for would make the rate unreasonably low; and (2) that the reduction asked for would operate as an unlawful discrimination in favor of Meridian and against other points in the State; and (3) that the proposed reduction would be a burden upon and a regulation of interstate commerce.

Third. That in order to properly determine and find whether the matter set up in the same answer is true or whether the prayer of the Meridian board of trade for reduced rates on grain and grain products over said road from Vicksburg to Meridian shall be granted and enforced by this commission to have the evidence called for.

It is therefore ordered that the said Alabama & Vicksburg Railroad Company produce before this commission on the 17th day of August, 1903, the following information and evidence to-wit:

(*a.*) The original cost of construction of said road.

(*b.*) The amount expended in public improvements.

(*c.*) The amount and market value of its bonds and stock.

(*d.*) The present as compared with the original cost of construction.

(*e.*) The probable earning capacity of the property under the rates now in force, under reasonable good management.

(*f.*) The sum required to meet operating expenses under reasonable good management.

19 (*g.*) The cost of said road to its present owners.

(*h.*) The cost of the present (1903) equipment of said road.

(*i.*) The owners' estimate of the present actual value of said road.

(*j.*) The owners' estimate of the present actual value of the equipment of said road.

(*k.*) The gross ton-age of freight in grain and grain products carried by said road within twelve months past.

(*l.*) The percentage of receipts on grain and grain products as compared with the gross freight receipts, including domestic and interstate tonnage and freight carried during the last 12 months, showing data for each station.

(*m.*) Gross passenger receipts during the past twelve months.

(*n.*) Actual cost of operation and sustenance in detail for the past twelve months.

The commission calls for the information as above specified for the past twelve months in several particulars, but will consider a longer period if desired by the railroad company, and will also consider any other evidence in this connection pertinent to the question involved that the said railroad company desires to submit. It is further ordered that a copy of this order be served upon said railroad company in the manner provided by law for serving notices.

Ordered this 7th. day of July, 1903.

20 MERIDIAN BOARD OF TRADE
v.
A. & V. RAILWAY COMPANY. } Answer to Rule.

Received and Filed this 19th Day of October, 1903.

In answer to the order of the honorable railroad commission of the State of Mississippi, of July 7th. 1903, I submit the following:

A. The original cost of construction of said road?

The line of railroad owned by the present A. & V. Railway Company was first chartered between Clinton and Vicksburg on December 19th. 1831, as the Clinton and Vicksburg R. R. Company. It was reorganized as the Vicksburg & Jackson Railroad Company in 1885 again reorganized as the Southern R. R. Company in 1846, and again as the Vicksburg and Meridian R. R. Company in 1867. During the earlier years it passed through the vicissitudes of fortune incident to the development of railroad property from its crude beginning to its present conditions, and during the war between the States its roadbed was practically destroyed, and its equipment and property was confiscated; a considerable portion of its road being directly in the line of march of the Federal troops. After the war it was practically rebuilt by the Vicksburg R. R. Company, which company — required to advance large sums of money to put it into a condition which permitted operation in any form. It is of course impossible to trace the cost of the property through all these years, but from the records of the V. & M. R. R. Company and the annual report of its receiver, the cost of the road and betterments as shown by the accounts of the receiver at March 31st. 1889 was $10,336,063.41.

B. The amount expended in permanent improvements.

Notwithstanding this large figure, the Vicksburg & Meridian Railroad Company, being unable to pay the interest on its bonded debt was forced into bankruptcy, and the ow-ers of the second mort-
gage bonds purchased the property at foreclosure sale and
21 reorganized the capital, wiping out absolutely its common and preferred stock aggregating $5,902,712.72, and 3rd mortgage bonds to their face value, not including unpaid interest to $1,917,000.00. In reorganizing the property, the Vicksburg and Meridian 3rd mortgage bond-holders retained the lien of the A. & V. 1st mortgage bonds aggregating $1,313,615.50 and capitalized the V. & M. 2nd mortgage lien aggregating $1,400,000.00 in capital stock of the Alabama and Vicksburg Railway Company to the amount of $700,000 and 2nd mortgage bonds in a like amount $700,000. These items with expenses incident to reorganization, show the costs of the property as $2,785,517.14, and the cost of the equipment as $61,654.69. These figures are of course entirely inadequate to represent the cost of the property and this fact should be constantly borne in mind in considering the cost of road. The above sums

have been increased since the organization of the Alabama and Vicksburg Company by $984,742.56 spent in improvement of the roadbed and structures, and $425,891.13 for the purchase of additional equipment. If these latter sums be added to the cost of road as shown by the receiver of the A. & V. R. R., the totals will appear to be as follows:—

| | |
|---|---|
| Cost of road at Apr. 1st, 1899 | $10,336,063.41 |
| Debts of the V. & M. R. R. paid by the A. & V. Ry. Co. and cost of organization | 133,910.18 |
| Subsequent improvements on roadbed and structures | 984,742.56 |
| Subsequent improvements on equipment | 425,891.13 |
| Total | $11,880,607.28 |

C. The market value of bonds and stock?

The amount of the bonds and stock now outstanding *are* as follows:—

| | | |
|---|---|---|
| | V. & M. 1st mortgage bonds | $1,000,000.00 |
| 22 | Consolidated 1st mortgage bonds | 588,800.00 |
| | 2nd mortgage bonds | 601,300.00 |
| | Common stock | 1,050,000.00 |
| | | $3,240,100.00 |

The issues of bonds and stock as above are not listed in the New York stock exchange or any exchange, nor could they be readily listed if desired on account of the small issues in each class, but by reason of this fact they are nor open to the general market for securities, nor are the records of sale made public. Very few transfers of stock have been made on the books of the company, and the bonds are likewise dealt with to a very small extent. There is no record of prices or values, but both bonds and stock are worth about par.

D. The present as compared with the original cost of construction?

It is impossible to give a definite answer to a question of this character. The present cost of construction could not be accurately estimated without a very large expense by competent engineers and by testing the market in the actual purchase of material and labor, while the original cost spread over 68 years could not be compared with the present cost, even if the latter figures were known.

E. The probable earning capacity of the property under rates now in force under reasonable good management?

The average gross earnings for the last five years *has* been $920,000.00 per annum.

23 F. The sum required to meet operating expenses under reasonable good management?

The average annual expenses for the last five years have been as follows:

| | |
|---|---|
| Actual operation of the property | $678,000.00 |
| Land purchased to provide facilities | 18,000.00 |
| | $696,000.00 |

The amount of operating expenses depends largely upon the number of trains run, the volume of business handled, the price of fuel and other supplies, and the scale of wages paid; all of which have greatly increased of late, and also on the freedom or otherwise from accidents or other casualties.

G. The cost of road to its present owners?

The cost of the road is given in answers A. & B. The owners of 55 % of the stock or a bare majority have maintained their investments in the property since 1881. They invested in the A. & V. R. R. Company, the sum of 388,521 or say $1,942,605.00 upon which their average annual return including the interest on bonds as well as the stock for the past five years has been $63,518.00 or only a little more than 3 % per annum, and for many years they received nothing.

H. The cost of the present 1903 equipment of said road?

The cost of the equipment acquired since the organization of the Alabama and Vicksburg railway is $425,891.13. There is no record of the cost of equipment acquired from the Alabama and Meridian R. R. It is proper to bear in mind however, in this connection that equipment depreciates at the rate of six per cent. per annum and that after ten years the value of freight cars is practically wiped out except for scrap, so that such equipment as was acquired prior to 1894 and has not since been destroyed and replaced out of operating expenses is practically worthless.

24 I. The owners' estimate of the present actual value of said road?

There is no way of obtaining this information, nor is there any reliable basis for fixing such value.

J. The owners' estimate value of equipment of said road?

There is no way of obtaining this information.

K. The gross tonnage of freights in grain and grain products carried by said road within the last twelve months?

78003 tons.

L. The percentage of receipts in grain and grain products compared with the gross freight receipts, including domestic and interstate tonnage and freight carried during the last twelve months, showing data from each station.

| Stations. | Per cent. |
|---|---|
| Meridian | 8.5 |
| Meehans | nil |
| Chunky | 0.3 |
| Hickory | 0.3 |
| Newton | 0.2 |
| Lawrence | nil |
| Lake | nil |
| Forest | 0.3 |
| Morton | 0.4 |
| Pelahatchie | 0.4 |
| Brandon | 0.03 |
| Pearsons | 1.2 |
| Jackson | 7.7 |
| Clinton | nil |
| Bolton | 0.1 |
| Edwards | nil |
| Smiths | nil |
| Bovina | nil |
| Vicksburg | 20.8 |

25 M. Gross passenger receipts during the last twelve months?

The gross passenger receipts during the last twelve months were $313,958.00. The average passenger earning for the last five years was $242,000.00.

N. Actual cost of operation and sustenance in detail for the last twelve months?

The actual cost of operation and sustenance for the last twelve months was as follows:—

| | |
|---|---|
| Conducting transportation | $336,241.00 |
| Maintenance of way | 243,601.00 |
| Maintenance of equipment | 204,633.00 |
| General expenses | 35,998.00 |
| Taxes | 28,500.00 |
| Purchase of necessary terminals | 41,409.00 |
| | $890,382.00 |

An analysis of the receipts of the company shows that at the present time not quite 37% of the total receipts is derived from State business, while over 63% is derived from interstate traffic. The proportion of the receipts derived from interstate traffic is less than one-half the cost of operating and sustaining the property and does not even amount to the cost of maintenance.

LARZ. A. JONES.

NEW ORLEANS, LA., October, 1903.

PARISH OF ORLEANS, }
State of Louisiana. }

Personally appeared before me a notary public in and for the parish of Orleans, State of Louisiana, Larz A. Jones, auditor of the Alabama Railway Company, who deposes and says that the above statements are true to the best of his knowledge and belief.

LARZ A. JONES,
Auditor, Alabama & Vicksburg Railway Company.

26 Sworn to and subscribed before me this 17th day of October, 1903.

[SEAL.] PURNELL M. MILNER,
Notary Public.

In the Matter of the Petition of THE CHICAGO BOARD OF TRADE against The Alabama & Vicksburg Railroad Company.

Be it remembered that on this the 19th. day of October, 1903, at a regular meeting of the Mississippi railroad commission, held at the time and place provided by law, came on to be heard the petition of the board of trade of the city of Meridian for a flat rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian Mississippi, over the Alabama & Vicksburg railroad, and upon the plea or answer of said railroad company to the said petition. The matter having been heard upon said petition and plea, and upon the pleadings and evidence, oral and documentary, offered by either side, and the arguments of counsel for the petition and for the railroad company as well, the commission took said matter under advisement and consideration all parties agreeing thereto.

Now on the 16th. day of November, 1903, the commission having duly considered the said matter now here in session as aforesaid, finds, orders and adjudges as follows:

First. That the prayer of the said petition should be and is hereby granted.

Second. That the Alabama & Vicksburg Railway Company is hereby ordered to put into effect over its line of road from Vicksburg, Mississippi to Meridian, Mississippi, inclusive of both of said cities, from and after December 8th, 1903, a flat rate of 3½ cents per 100 pounds on grain and grain products, and no more.

Third. That the clerk of this commission certify this order to said railroad company and give due notice thereof to said company as required by law.

JNO. A. WEBB, Sect.

27 STATE OF MISSISSIPPI:

I, the undersigned secretary of the railroad commission of the State of Mississippi, hereby certify that the foregoing transcript con-

tain a full, true, and perfect copy of the record in the matter of the petition of the Board of Trade of Meridian against the Alabama & Vicksburg Railway Company for a flat rate of 3½ cents on grain and grain products from the city of Vicksburg to said city of Meridian.

Given under my hand and seal of office this 3rd. day of December, 1903.

[SEAL.] JNO. A. WEBB, Secretary.

Filed Dec. 3, 1903.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Injunction Bond.

Know all men by these presents, that we the Alabama & Vicksburg Railway Company, principal and Thomas A. McWillie and Robert H. Thompson, sureties, are held and firmly bound unto the Railroad Commission of the State of Mississippi, in the sum of five hundred dollars ($500.00) for the payment of which sum well and truly to be made we bind ourselves, jointly and severally by these presents. Dated this third day of December, A. D. 1903.

The condition of the above obligation is such that whereas the said Alabama & Vicksburg Railway Company, complainant, by its bill this day filed in the chancery court of Hinds county, against the Railroad Commission of the State of Mississippi, has prayed and obtained a fiat for an injunction against the said defendant restraining it from enforcing its certain order of November 16, 1903, directing a fiat rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian.

Now therefore, if the said Alabama & Vicksburg Railway Company shall well and truly pay all damages and costs which
28 may be awarded against it or which the said defendant, The Railroad Commission of the State of Mississippi, may suffer or sustain by the suing out of the above mentioned injunction in case the same shall be dissolved, then this obligation shall be void. Otherwise it is to remain in full force and effect.

ALABAMA & VICKSBURG RAILWAY COMPANY,
By McWILLIE & THOMPSON, Attorneys.
THOS. A. McWILLIE.
R. H. THOMPSON.

STATE OF MISSISSIPPI, }
Hinds County. }

Personally appeared before me the undersigned notary public in and for the city of Jackson, county of Hinds, State of Mississippi, Thos. A. McWillie and Robert H. Thompson, sureties on the above

bond, who being duly sworn deposes and say that they are severally worth the sum of $500.00 in property subject to execution, over and above their exemption and liabilities.

THOS. A. McWILLIE.
R. H. THOMPSON.

Sworn to and subscribed before me this Dec. 3, 1903.

J. H. THOMPSON, [SEAL.]
Notary Public.

Filed Dec. 3, 1903.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Injunction.

THE STATE OF MISSISSIPPI, }
Hinds County. }

To the Railroad Commission of the State of Mississippi:

Whereas the Alabama & Vicksburg Railway Company has filed in our chancery court for the first district of Hinds county, its certain bill of complaint against you the said Railroad Commis-
29 sion of the State of Mississippi, praying to be relieved touching the matters in said bill of complaint and has prayed and obtained from the Hon. Robert B. Mayes, chancellor, an injunction on the execution of bond as therein directed and the said complainants having executed bond in accordance with the requirements of said fiat. We, therefore, command and strictly enjoin you that you wholly refrain from enforcing or attempting to enforce the certain order made by you on November 16th. 1903, wherein the said Alabama & Vicksburg Railway Company was and is directed and required to put into effect over its line of road from Vicksburg to Meridian, Mississippi, inclusive of both cities a flat rate of 3½ per cent. per hundred pounds on grain and products and no more, until the further order of this court to the contrary.

Witness the signature of the clerk of said chancery court and the seal of said court hereto attached this 3rd. day of December, A. D. 1903.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C. [SEAL.]

To the sheriff of Hinds county to execute and return.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Ret'd & filed Jan. 1, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Answer to the Original Bill of Complaint.

THE ALABAMA & VICKSBURG RAILWAY COMPANY, Complainants,
*vs.*
THE MISSISSIPPI RAILWAY COMMISSION, Defendants.

To the chancery court of the first district of Hinds county, Mississippi, to — term, 1904·

The answer of the Mississippi Railroad Commission, composed of S. D. McNair, president; J. C. Kincannon, and R. L. Bradley,
30 to the bill of complaint of the Alabama & Vicksburg Railroad Company heretofore exhibited against the commission, when it was composed of John D. McInnis, president; A. Q. May, and J. C. Kincannon.

I.

This commission reserving all rights which by law it may reserve and waiving nothing, answering said bill of complaint or so much and such parts thereof as it is advised it is material or necessary for it to answer, answering says:

II.

That paragraph- 1, 2, 3 and 4 are admitted and confessed. The first clause of paragraph 5 is also admitted and confessed. As to the second clause of paragraph 5 this respondent says that the rate on grain and grain products between intermediate points from Vicksburg and Meridian may be as set out in complainant's tariff stated in the bill, according to mileage, yet this respondent denies that the rate of three and one-half cents (.03½) per hundred pounds on grain and grain products is or would be improperly or illegally discriminative in favor of the cities of Vicksburg and Meridian against the city of Jackson and all other intermediate stations; respondent is informed that the Meridian board of trade claim- and charges that the rate of tariff is fraudulent and of itself unreasonably and unlawfully discriminative against Meridian. And, this respondent says that even though the facts be as stated in the second clause of paragraph 5, as to rates to intermediate points, yet nevertheless, such facts constitute no substantial reason for limiting or denying to the commission the power exercised in the order complained of in the bill of complaint.

Said tariff-, as shown by the facts developed before this commission on the hearing of this cause are unreasonable, discriminative and in fact unlawful. Responding to the third clause of the said paragraph 5 of the said bill of complaint which charges that the rate on grain and grain products fixed by the order complained of
31 is improperly and illegally discriminative, because no such low rate is fixed upon any other commodity of the same class

between the same points and that it discriminates against the producer and shipper of native corn, because the rates thereon from Vicksburg and other stations on complainant's line to Meridian still remain far in excess of said rate so ordered and ranges as stated in said clause of said paragraph, and that said rate fixed in said order discriminates against the complainants in favor of numerous other railroad corporations operating in this State, this respondent says as to said charges that they, if true in fact, which respondent denies, suggest no sound reason for adjudging the rate fixed in the order complained of either as being unreasonable or invalid, or as being of itself unjustly discriminative in the particulars mentioned; that the matters so set forth are not of the rules or laws provided for consideration in the fixing of rates by this commission. Responding to the fourth clause of said paragraph 5 based upon the information and belief of the complainant, this respondent denies that the whole proceeding which resulted as alleged in the making of the said order complained of, and charged in the bill to be an undisguised scheme to build up the jobbing trade of the city of Meridian to the detriment and disadvantage of other localities in the State, and particularly other stations on complainant's lines, by a discrimination against them in favor of Meridian; respondent says this charge is unfounded in fact and is untrue.

And this respondent further denies the charge contained in the said bill of complaint to the effect that said order is illegal and against the true intent and meaning of chapter 134 of the Code of 1892 for the reasons set forth in the said bill: and it denies the covered charge contained in said bill that the approved tariff herein before mentioned, was altered by the order of the commission therein complained of at the instigation of purely selfish interests, so as to change a rate which did not discriminate into a rate which does; said charge is not well grounded, and is untrue. Your respondent declines to answer the argument contained in the
32 latter part of paragraph 5 aforesaid, except to deny that the assumption- therein contained are true or the conclusions therein announced correct, except the closing sentence which admits that the findings of the commission are *prima facia* correct.

## III.

Responding to the sixth paragraph of the bill of complaint, respondent denies that the rate fixed by the order complained of is unreasonably low because *to* complainants cannot comply with said order and put said rate in force on its line without incurring a loss on every shipment transported at said rate, and respondent denies the averment and charge found in the said paragraph that said order is illegal and contrary to section 4290 of the Code because of said alleged low rate and because of the said alleged loss, or because of anything found in section 4290 of the Code, or because sections

17 of the constitution of 1890 of this State would be violated, or because article 5 of the Constitution of the United States would be violated by reason of said alleged low rate and loss or by reason of anything stated in said sixth paragraph of said bill. Respondent says that the truth is, the president of complainant railroad company testified before this commission that said road was hauling grain and grain products from Vicksburg to Meridian for other railroads at three cents per hundred pounds, and that the objection to this order was, that the company did not have enough cars to do the work promised the road if this order was made.

Responding to the seventh paragraph of the bill of complaint this respondent denies upon information and belief the averment found in said paragraph that complainant has no net income from traffic from point to point within this State, after deducting the cost of maintenance and operation properly imputable to such traffic; and respondent likewise denies the averment of said complainant that the complainant's net profit arises entirely out of its interstate business, and respondent likewise denies the correctness of the
33 detailed statement of such income, and cost of maintenance and operation found in complainant's answer to the rule made upon it by this commission and made Exhibit "A" to its said bill of complaint, and respondent calls attention to the effort to pack said answer in many respects and to its evasion and failure to answer material facts of the rule, especially its refusal to answer questions H–I–J of the said answer.

Respondent denies upon its advice, and information which it believes, that the said rate complained is illegal either because the same is unreasonably low, or because the same must of necessity operate a burden upon complainant's interstate traffic, or because it is in violation of clause 3 of section 8 of article 1 of the Constitution of the United States.

V.

Responding to paragraph eight of the complaint, this respondent denies upon its information and belief that the aforesaid proceedings of this commission complained of in said bill were in fact an undisguised scheme of the Meridian board of trade sought to be effectuated through such proceedings or contemplated or involved the regulations of interstate commerce or laid any unreasonable burden upon the complainant's domestic efforts to be borne by its interstate traffic; respondent says this commission had no purpose or intention to aid any such scheme. Respondent admits that fundamental idea in the proceedings complained of was to secure a low rate on grain and grain products by barge down the Mississippi river to Vicksburg from St. Louis and the West, but this respondent says that this idea was not by any means the sole reason or consideration for making said rate and it denies the consideration of any colorable

device to have the products aforesaid transported to Vicksburg which were destined for Meridian and re-shipped as domestic freight from Vicksburg to Meridian, and it denies all purpose or subterfuge covertly charged in the bill to evade interstate traffic or interstate laws, and it denies upon information and belief that it was
34 the purpose of the petitioner for said rate to practice any such device or fraud; but, your respondent further state- for the commission and upon information for the petitioners for said order, that the rate fixed in the order as aforesaid, would not only be a fair and reasonable reduction over complainant's said lines of road, but that it would secure to them the benefits of honest competition, for the freights mentioned, by the Mobile & Ohio Railroad Company and by the Southern Railway Company and other lines of railway reaching Meridian and engaged in either State or interstate business, and your respondent emphatically denies the charge that the complainant is merely the victimized agent in any coercive undertaking used as a club to beat down State rates on other lines as stated in the bill.

VI.

Responding to the ninth paragraph of said bill this respondent denies that by reason of the fact that the rate fixed in the order complained of is lower, and this is denied, than any rate on the same commodities in force or directed to be put in force on any of the other railways lines in this State for the same distance between points thereon in said State, the said order is illegal and void because in violation of the XIV amendment to the Constitution of the United States because it denies to complainant the equal protection of the law. Respondent says that the complainant is a domestic corporation wholly within the State, and that the powers of this constitution are generally more enlarged as to the supervision of complainant road, and that in fixing or approving tariff rates on complainant's road and other roads commission took into consideration all facts, conditions, circumstances and matters required of it by law and fixed the rates reasonably and fair to all roads accordingly; and the commission says that it perchance the face of the approved tariffs should show the fact complained of as being in favor of other roads, it is no ground for permitting an unreasonable and oppressive rate, subject to its jurisdiction, to remain in force on the complainant road.

35 VII.

Responding to paragraph ten of the complaint, respondent says that in fixing the rate complained of it did not take into consideration the entire business of the complainant railroad and its earnings from all kinds of traffic, but respondent affirms that the local rate

on grain and grain products was fixed in and by the order complained of unaffected by any influence thereon by interstate traffic and that in fixing said rate the law was strictly observed as this commission was advised and believed; the commission denies that section 4290 of the Code of 1892 of this State is unconstitutional and void; nevertheless, say the commission, even though it be the order herein complained of was heard entirely thereon, but made as above stated and said order is not void because in conflict with clause 3, sec. 8, art. 1 of the Constitution of the United States.

VIII.

Paragraph eleven of the complaint is confessed.

Having not fully answered this commission prays that the temporary injunction granted herein may be dissolved and costs, attorney's fees and damages awarded, and that upon final hearing the complainat may be dismissed. Or respondent prays for general relief in the premises. As in duty bound it will ever pray.

MISSISSIPPI RAILROAD COMMISSION,
By WM. WILLIAMS, Attorney General, &
MONROE McCLURG, Of Counsel.

STATE OF MISSISSIPPI, }
Hinds County. }

This day S. D. McNair, president of the Mississippi railroad commission came in person before the undersigned clerk of the supreme court of said State and makes oath that to the best of his knowledge information and belief, the matters and things set forth and stated in the foregoing answer are true as herein stated.

S. D. McNAIR,
President of Mississippi Railroad Com.

36 Subscribed to and sworn to before me this the 21st. day of January, A. D. 1904.

GEO. C. MYERS, [SEAL.]
Clerk of Supreme Court.

Filed Jan'y 23/04.

W. W. DOWNING, Cl'k,
By S. LIVINGSTON, D. C.

Chancellor's Notes.

A. & V. Ry. Co.
*v.*
Railroad Commission.

Set for hearing for final determination on merits, by complainant and by consent of both parties.

1st. Bill of complaint and Exhibits "A," and answer of defendants.

Complainants introduced:

1st. Affidavit of C. C. Harvey and Exhibit- "A" & "B," T. F. Steele and Exhibit Larz A. Jones, and cross examination of Harvey, Steele, and Jones. L. Green's affidavit, C. B. Compton, C. C. Cameron, Haiden Miller, certificate sec't'y R. R. comm's'n, agreement of counsel as to affidavit, complainants rest and report of R. R. comm's'n both 8th. and 9th.

Defendants introduced:

Affidavit H. M. Threefoot and cross affidavit A. H. McInnis and cross affidavit *of* E. A. Slaughter and cross affidavit. Affidavit of Tom Lyle and cross affidavit; affidavit of J. G. Russell, Jr., and cross affidavit; affidavit of A. D. George, parts of 8th. and 9th., report R. R. comm's'n, and such parts of Interstate Commerce Commission as either party claim to *road* (read?)

Sworn returns for taxation for 1903 and 1904 before R. R. commission.

Signed this 18th day of June, 1904.

ROB'T B. MAYES, Chancellor.

Chancellor's notes filed 18th. June, 1904.

ROB'T B. MAYES, Chancellor.

37 Affidavit of C. C. Harvey.

In the Chancery Court of the First District of Hinds County, Mississippi.

The Alabama & Vicksburg Railway Company, Complainant,
*v.*
The Railroad Commission of the State of Mississippi, Defendant.

Personally appeared before me, the undersigned notary public, in and for the parish of Orleans and State of Louisiana, Cyril C. Harvey, who being duly sworn, deposes and says:

That he is and has been for a number of years president of the Alabama & Vicksburg Railway Company; that the tariff rate of freight charges of said company, hereto annexed and marked "Exhibit A" is the true tariff of charges which has been in force upon the said railway since July 20th, 1902, and is still in force, and that said charges are the true and real charges made to all shippers upon said railway; that said tariff shows, which is the fact, that the rate on grain and grain products (except flour, which is 12c.) from point to point on said line of railway is 10c. per hundred pounds in carload lots for a distance of 140 miles; in fact, the rate on grain and grain products (except flour) between different points on said line of railway ranges from 5c. per hundred pounds in carload lots for distance of 5 miles or less to 10c. per hundred pounds in carload lots for distances 150 miles and over 60 miles, (except that, by order of the railroad commission, a rate of 4c. per hundred pounds is carried on native grown corn in carloads for a distance of 10 miles and less).

And affiant further states that said rates have been duly approved by the railroad commission of the State of Mississippi, as will appear by printed copy of the eighth biennial report, on pages 100 and 106, which is made a part of this affidavit and annexed thereto.

Further, affiant says that no rate as low as 3½c. per hundred pounds is fixed by said railroad commission on any other
38 commodity of the same class between the same points or between other points of the same distance; and that on carload lots the rate upon such other commodities ranges from 4c. per hundred pounds for distance of 5 miles or less, to 10c. per hundred pounds for a distance of 150 miles and over 60 miles, as will appear by said tariff above referred to and made part hereof.

Affiant further says, that on none of the lines of railroad having a mileage in the State of Mississippi equal to that of the Alabama & Vicksburg railway is there such a low rate on the same or any other commodity for the same distance as 3½c. per hundred pounds, though it is true that on some lines of railway in Mississippi there is in effect a rate of 3c. per 100 pounds on brick and cord wood for a distance of 50 miles or less, such 50 miles being about one-third of the distance for which the rate of 3½c. per hundred pounds on grain and grain products is intended to apply.

Affiant further says, that the full rate of tariff of said Alabama & Vicksburg Railway Company is in no manner discriminative as against Meridian and in favor of other points along said line of railroad, the rates of said tariff being identical as to said city of Meridian and other points of the same distance.

Further, your affiant says that in the proceedings before the railroad commission of the State of Mississippi, which resulted in the adoption by it of the aforesaid rate between Vicksburg and Meridian of 3½c. per hundred pounds on grain and grain products, and which meeting was held in the city of Jackson on the 19th day of

October, 1903, the said board of trade of Meridian was represented by Hon. Monroe McClurg as their duly authorized and empowered attorney, and that said representative of said board of trade openly avowed in his argument before said commission that the purpose of the board of trade in applying for this rate of 3½c. was to foster and build up the trade of the city of Meridian, and to encourage and promote its interests, and the interests of the business community of that city, and that it was openly stated and was part of the
39 argument before the railroad commission by said representatives that while said board of trade and parties to be benefitted by said low rate, did not expect any great quantity of grain to be shipped from Vicksburg over the Alabama & Vicksburg railway, that the adoption and enforcement of said low rate of 3½c. would undoubtedly result in compelling the Mobile & Ohio railroad to reduce its through rate from St. Louis to Meridian to a rate which would be equivalent to the water rate, St. Louis to Vicksburg, plus 3½c. from Vicksburg to Meridian.

Further, affiant says that the practice universally adopted by railroads and approved by the different railroad commissions, and the Interstate Commerce Commission, is to charge a less rate per hundred pounds on shipments in carload lots than on shipments in lots less than one carload, whereas such order makes no such distinction.

Further, your affiant says that it appears upon the written communication accompanying the petition of the said Meridian board of trade addressed to the Mississippi railroad commission and purporting to be explanatory thereof, the request for this rate of 3½c. is assumed to be justified upon the theory of some natural advantage in the location of Meridian, which would entitle it to a lower rate than other towns on the same line of railroad. And affiant says that the said city of Meridian has no natural advantage over other towns on said Alabama & Vicksburg railway, and has only the artificial advantage of being a junction point of several railroads, which advantage is shared with it by other cities. Affiant further states that the fact of its being a junction point does not constitute a reason for a discriminative tariff in its favor, because competition between two or more railroads at that point gives it the advantage of competition and would prevent any discrimination against it by any one railroad. And affiant further says that the fact that the city of Meridian has this railroad competition is a reason why it should not ask for a lower rate of tariff than other points not having this advantage.

Further, your affiant says that said president accepted the rebilling rate of 3½c. from Vicksburg to Meridian, hereinafter
40 mentioned, not because the same was satisfactory or sufficient, but under menance of said railroad commission to impose a flat rate of 3½c. upon his said road. Affiant states that, as a matter of fact, said president asked for a rebilling rate of 5c. as being

the lowest rate which would afford any profit in handling the business.

Further, affiant says that grain and grain products could not be hauled over the road of said Alabama & Vicksburg Railway Company from Vicksburg to Meridian at the rate of 3½c. per hundred pounds, except at a material loss to said railway company. Affiant says that the books of said railway company show that during the year ending June 30, 1903, there were 3089 tons of grain and grain products billed from Vicksburg to Meridian at $3657.86, or at an average rate of $1.184 per ton. That said 3089 tons of grain and grain products constituted 160 carloads, giving an average load per car of 18.6 tons, which is a proper and sufficient load for the capacity of the car. Affiant says that the average weight of these 160 cars, as is shown by actual record of 108 of them, was 15.5 tons each, so that the live load was 54.54 % of the total.

From Vicksburg to Jackson the average maximum engine load or the hauling capacity for each engine is 781 tons; from Jackson to Meridian the same capacity is 819 tons. As a matter of practical application, it is impossible to maintain this average maximum load above stated, that being the highest theoretical load possible under a combination of all of the most favorable conditions. A fair working maximum engine load would be 85 % of the theoretical maximum, or 664 tons from Vicksburg to Jackson, and 696 tons from Jackson to Meridian. Of the maximum theoretical load, grain would form 54.54 %, or 426 tons, from Vicksburg to Jackson, and 447 tons from Jackson to Meridian. Of the maximum practical load of 85 %, grain would form 362 tons from Vicksburg to Jackson, and 380 tons from Jackson to Meridian.

For the fiscal year ending June 30, 1903, the average train
41 load of freight carried on said railroad was only 239.09 tons, but this compares very favorably with the average train load in this territory as shown in the report of the Interstate Commerce Commission for 1902, p. 67, where the average is given as 219.96 tons.

At 3½c. per hundred pounds from Vicksburg to Meridian, the earnings would be:

On 362 tons, from Vicksburg to Jackson, and 380 tons, from Jackson to Meridian, $261.80.

The expenses for freight for the year ending June 30, 1903, were $598,713.30.

The expenses for freight per freight train mile were $2.176. The expenses, therefore, per freight train, Vicksburg to Meridian, (140 miles,) $304.64, being therefore, greater than the earnings ($261.80) would be by $42.84.

This does not take into consideration fixed charges, which were per freight train, $42.84, making the total cost per freight train $337.48, as against a total earning capacity of $261.80, that is to say, a loss of $85.68.

This calculation does not take into consideration the cost of returning the empty cars, which would be about two thirds the cost of hauling a loaded train, or about $230.00, nor does it take into consideration any dividends due to stockholders.

In reaching the amount of freight expense there has been made a division of expense between passenger and freight, as is shown by Document P 2, hereto annexed and made part hereof, as Exhibit B which is a correct tabulation of the expense and proper and correct division of the same, said division being based upon the formula and rules prescribed by the Interstate Commerce Commission.

Affiant further says, that it is not true that the president of the Alabama & Vicksburg Railway Company stated before the commission that his road was hauling grain and grain products from Vicksburg to Meridian for other railroads at 3c. per hundred pounds; and
42 that the objection to this order of the railroad commission was that the company did not have enough cars to do the work promised if the order was made; the truth and facts being that said president did state before the railroad commission, on or about July 22, 1902, a deputation from Vicksburg and Meridian being present, that a five cent rate was as low as would afford his company any profit, but that to avoid a contest and in order to meet the views of the commission and of the merchants of Vicksburg and Meridian, he was willing to adopt what was called a rebilling rate of 3½c. per hundred pounds on grain in carloads, provided the shipments did not originate upon the said road, but consisted of grain coming to his road from connecting roads in through cars upon which shipments his road had received a previous haul and revenue. He explained, that as a large proportion of the outward freight traffic of the Alabama & Vicksburg railway was shipments such as lumber, staves, cotton, etc., to connecting roads by which he lost control of his company's cars, he had to call upon said connecting roads for a proportion of empty cars to move such through business, which empty cars had to haul empty to points to be loaded, and he could better afford to accept said foreign cars loaded with grain at even 3½c. per hundred pounds than to haul empty cars. The offer under said circumstances was accepted by the merchants of Vicksburg and Meridian and by the commission.

The reason given by said president for having consented to a rebilling rate of 3½c. per hundred pounds, provided the shipments were from connecting roads — had received a haul and revenue therefor, was correct inasmuch as said railroad company's business consists very largely of shipments to points outside the State of Mississippi over connecting roads that have to haul said shipments greater distances, and many of the cars of said Alabama &
43 Vicksburg Railway Company being thus diverted from its line of road, it becomes necessary to call upon said connecting roads (as is usual and customary between railroads) to send their empty cars to receive a proportion of said through shipments, which cars the Alabama & Vicksburg Railway Company hauls

empty to the mills and points of shipment along its road, to be loaded, and it could better afford to haul cars laden with grain received by it from connecting lines at 3½c. per hundred pounds than to haul empty cars for nothing, although 3½c. did not as a matter of fact cover the actual cost of the haul but lessened the expense thereof to that extent.

Further, affiant states that the expense of receiving and hauling a loaded car delivered to it at Vicksburg by another railroad is manifestly much less than the cost of securing, hauling and placing one of its empty cars upon the switch at Vicksburg for hauling and again switching it to its train yard to be made up with other cars into a train; and further, under loads cars would not be delayed, whereas, in the case of an empty car placed for loading, shipper would be allowed at least 48 hours in which to load the car.

Further, affiant says that it has a sufficient number of cars for the purposes of all of its business, if said business were between points on its line.

Further, affiant says that the receipts of the Alabama & Vicksburg Railway Company show that at the present time not quite 37% of its total receipts is derived from business within the State of Mississippi, while over 63% is derived from interstate traffic. The proportion of the receipts derived from State traffic is less than one half the cost of operating and sustaining the property, and does not equal the cost of maintenance. Affiant further says, that the affidavit filed with said commission in answer to the rule for information and contained in said Exhibit A., to the bill herein, as
44 to the cost of maintenance and operation, is correct, and he reiterates and reaffirms all the statement made in said affidavit and asks to have them made part of this affidavit.

Further, affiant says that there is no attempt in said affidavit and the answers therein, to evade or fail to answer any material questions or material facts of the rule, the fact being that said railway company and its officers have candidly and fully answered every question within their power to answer, and have given all the information available. They have been asked, in question H, the cost in 1903 of the equipment of said road, which answer would merely involve the expression of an opinion and could not be based upon any available information, and they have been requested to express in questions I and J the owner's estimate of the present actual value of said road and the equipment thereof, that is to say, to express their opinion of the opinion of third persons being stockholders of said railway company who are scattered all over the world.

Further, your affiant says that the request of the board of trade and order of the commission would apply from the river side at Vicksburg as well as from the station in said town. Grain to be shipped as suggested in barges from St. Louis and other river stations to Vicksburg, would have to be taken in cars from the river side

and hauled up the hill to Vicksburg, a distance of over two miles, with a grade of $1\frac{6}{10}$ %; for about 6000 feet the difference in elevation is 92 feet, and the cost of switching to and from said river front and the train yard would not be less than $3.00 per car, which would have to be borne out of the 3½c. rate.

It has been shown that the average carload of grain of 18.6 tons, which — 3½c. per hundred pounds, amounts to only $13.02 per car. This amount would have to defray the cost of switching at Vicksburg, amounting to not less than $3.00 per car, which would leave only $10.02, or at the rate of $2\frac{7}{10}$c. per hundred pounds, for hauling the load 140 miles, the cost of switching at Meridian and of the return of the empty car to Vicksburg.

Affiant further says, that the Alabama & Vicksburg Rail-
45 way Company has and had on June 30th last, as shown by the annual statement of that date, 787 freight cars, equal to 5.5 cars per mile of road; that this equipment is ample for the company's business between points on its own line, and exceeds the average on other railroads in the South, as shown on page 22 of the last report of the Interstate Commerce Commission, stating the average number of freight cars per mile of road in group V., including Mississippi, Alabama, Kentucky, Georgia and Florida, which was 4.5; the Alabama & Vicksburg Railway Company thus having an excess of 22 % more cars per mile of road than the whole of the railroads companies in said group; that the average number of freight trains the whole length of said road per day is three in each direction, or six trains per day; that these six trains include an average of 21 cars each, which would be 126 cars, or only about one sixth of the equipment of the company, but that owing to delays at stations, due to shippers not loading cars promptly or consignees unloading promptly, railroad companies have to provide 4 to 5 times the number of cars actually run daily in their trains; that said railroad company finds it necessary to furnish part of the freight equipment for outbound shipments; that this results from the fact that the larger proportion of the through freight traffic with connecting roads is outbound, and, as a rule, goes distances far greater than the haul of the A. & V. railway; lumber, for example, is generally forwarded to Ohio River points, or even further, a distance of 700 miles or more, and much of the cotton shipped to Carolina or New England points, so that said company's cars used in such shipments are away weeks and even months at a time; and if it is to engage in such through business, it would only be a question of a short time, under such circumstances, before it would be almost denuded of freight cars, unless its connections furnished some of the empty cars from such through traffic; and that it is frequently
46 necessary to offer inducements in the shape of accepting low rate traffic to get cars from connecting roads, and load with return shipments, so if cars are needed for outbound shipments, it is frequently better to accept a low rate, even if it is not a paying

rate, than not to get the cars; that this is particularly the case with a short line like that of the Alabama & Vicksburg railway (140 miles in length) that has a comparitively small traffic between points solely on its line.

C. C. HARVEY.

Sworn to and subscribed before me this 2" day of March, 1904.

PURNELL M. MILNER,
Notary Public.

[SEAL.]

(Here follows Exhibit "A" to affidavit of C. C. Harvey, marked p. 46½.)

Exhibit "A" to affidavit of C C Harvey

# ALABAMA & VICKSBURG RAILWAY CO.

## FREIGHT TARIFF No. 364-A

(Cancels Local Distance Tariff L-85 and Supplements.)

—APPLYING ON—

# GENERAL MERCHANDISE

—BETWEEN—

# STATIONS

—ON THE—

# ALABAMA & VICKSBURG RY.

**Rates named in this Tariff apply ONLY on traffic originating and ending within the State of Mississippi, and are made in accordance with rulings of Mississippi State Commissioners.**

**Governed by Southern Classification No. 25, A. & V. Ry. Classification No. 270 and Supplements and Subsequent issues, with exceptions as noted in A. & V. Ry. Classification Circulars Nos. 165 and 277 and Supplements or Subsequent issues.**

**New Orleans, La., July 12th, 1902.** **Effective July 20th, 1902.**

**T. F. STEELE, General Freight Agent.**

**J. D. GRANT, Asst. General Freight Agent,**

**New Orleans, La.**

(Authority No. 934.)

PALFREY-DAWSON CO., LTD., 213-216 CAMP ST N. O.—B1045

46 1/2

## TABLE OF DISTANCES BETWEEN STATIONS.

| STATIONS | | Meridian | Jackson | Vicksburg |
|---|---|---|---|---|
| Meridian | Miss. | .. | 96 | 140 |
| *Lost Gap | " | 6 | 90 | 134 |
| *Grahams | " | 11 | 85 | 129 |
| *Smith & Allen | " | 14 | 82 | 127 |
| *Point | " | 15 | 81 | 125 |
| Chunky | " | 17 | 79 | 123 |
| *Ragland | " | 18 | 79 | 122 |
| Hickory | " | 23 | 73 | 117 |
| *Skinners | " | 29 | 67 | 111 |
| Newton | " | 31 | 65 | 109 |
| Lawrence | " | 35 | 61 | 105 |
| *Quattlebaum | " | 37 | 59 | 103 |
| *Scoggins | " | 38 | 58 | 102 |
| Lake | " | 41 | 55 | 99 |
| *Muskegon | " | 42 | 54 | 98 |
| *Lake Lumber and Imp. Co. | Miss. | 42 | 54 | 98 |
| *Russells | " | 45 | 51 | 96 |
| *Fairchilds | " | 47 | 50 | 94 |
| Forest | " | 49 | 47 | 91 |
| *Raworth | " | 55 | 41 | 85 |
| *Gravel Pit | " | 59 | 37 | 81 |
| Morton | " | 60 | 36 | 80 |
| *Adams Lber. Co. | " | 64 | 32 | 76 |
| *Clarksburg | " | 65 | 31 | 75 |
| Pelahatchie | " | 69 | 27 | 71 |
| *Rankin | " | 76 | 20 | 64 |
| Brandon | " | 81 | 15 | 59 |
| *Rice Hill | " | 84 | 12 | 56 |
| *Greenfields | " | 85 | 11 | 55 |
| *Howell | Miss. | 88 | 8 | 52 |
| Pearson | " | 91 | 5 | 49 |
| Jackson | " | 96 | .. | 44 |
| *Dixon | " | 101 | 6 | 40 |
| Clinton | " | 105 | 9 | 35 |
| *Hinds | " | 110 | 15 | 30 |
| Bolton | " | 113 | 17 | 27 |
| *Champion Hill | " | 117 | 21 | 23 |
| Edwards | " | 122 | 26 | 18 |
| *Smiths | " | 126 | 30 | 14 |
| Bovina | " | 130 | 34 | 10 |
| *Newmans | " | 132 | 36 | 8 |
| *Mulligan | " | 133 | 38 | 7 |
| *Beechwood | " | 136 | 41 | 5 |
| Vicksburg | " | 140 | 44 | .. |

*Prepay Stations.

| FOR DISTANCE OF | | | | CLASSES. PER HUNDRED POUNDS. | | | | | | | | | | Per Bbl. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 | 4 | 5 | 6 | A | B | C | D | E | H | F |
| 5 Miles or less | | | | 25 | 22 | 18 | 15 | 12 | 11 | 10 | 13 | 12 | 5 | 18 | 20 | 21 |
| 10 " | and over | | 5 | 25 | 22 | 18 | 15 | 12 | 11 | 10 | 13 | 12 | 6 | 18 | 20 | 21 |
| 15 " | " | " | 10 | 30 | 26 | 22 | 18 | 16 | 14 | 11 | 14 | 14 | 7 | 19 | 22 | 23 |
| 20 " | " | " | 15 | 33 | 29 | 25 | 20 | 18 | 16 | 12 | 15 | 16 | 7 | 21 | 23 | 26 |
| 25 " | " | " | 20 | 36 | 32 | 27 | 23 | 20 | 17 | 13 | 15 | 17 | 8 | 23 | 24 | 28 |
| 30 " | " | " | 25 | 39 | 34 | 29 | 25 | 21 | 18 | 13 | 16 | 18 | 8 | 24 | 26 | 29 |
| 35 " | " | " | 30 | 41 | 36 | 32 | 27 | 22 | 19 | 14 | 17 | 19 | 9 | 25 | 27 | 30 |
| 40 " | " | " | 35 | 45 | 39 | 34 | 28 | 23 | 20 | 14 | 17 | 20 | 10 | 26 | 29 | 32 |
| 45 " | " | " | 40 | 48 | 41 | 36 | 29 | 24 | 21 | 15 | 18 | 21 | 11 | 27 | 30 | 33 |
| 50 " | " | " | 45 | 50 | 43 | 37 | 30 | 25 | 22 | 16 | 19 | 22 | 12 | 28 | 31 | 35 |
| 55 " | " | " | 50 | 52 | 44 | 37 | 31 | 26 | 23 | 16 | 20 | 23 | 12 | 29 | 32 | 35 |
| 60 " | " | " | 55 | 52 | 44 | 38 | 31 | 26 | 23 | 17 | 21 | 24 | 13 | 30 | 33 | 36 |
| 65 " | " | " | 60 | 54 | 45 | 39 | 32 | 27 | 23 | 17 | 22 | 25 | 14 | 31 | 34 | 37 |
| 70 " | " | " | 65 | 54 | 45 | 39 | 32 | 27 | 23 | 18 | 22 | 25 | 14 | 31 | 35 | 38 |
| 75 " | " | " | 70 | 56 | 47 | 41 | 34 | 28 | 24 | 18 | 23 | 26 | 14 | 32 | 36 | 39 |
| 80 " | " | " | 75 | 56 | 47 | 41 | 34 | 28 | 24 | 18 | 24 | 26 | 15 | 32 | 37 | 40 |
| 85 " | " | " | 80 | 58 | 48 | 42 | 35 | 29 | 25 | 18 | 25 | 27 | 15 | 33 | 38 | 41 |
| 90 " | " | " | 85 | 58 | 48 | 42 | 35 | 29 | 25 | 18 | 27 | 27 | 15 | 33 | 39 | 42 |
| 95 " | " | " | 90 | 60 | 49 | 43 | 36 | 30 | 26 | 18 | 28 | 28 | 15 | 34 | 40 | 43 |
| 100 " | " | " | 95 | 60 | 50 | 43 | 36 | 30 | 26 | 18 | 29 | 28 | 15 | 34 | 40 | 44 |
| 110 " | " | " | 100 | 62 | 52 | 46 | 39 | 33 | 29 | 18 | 30 | 29 | 15 | 35 | 41 | 46 |
| 120 " | " | " | 110 | 64 | 54 | 47 | 40 | 35 | 30 | 18 | 31 | 30 | 15 | 35 | 41 | 48 |
| 130 " | " | " | 120 | 66 | 56 | 48 | 41 | 36 | 31 | 18 | 32 | 31 | 15 | 36 | 42 | 49 |
| 140 " | " | " | 130 | 68 | 57 | 49 | 42 | 37 | 32 | 18 | 33 | 32 | 15 | 35 | 42 | 50 |
| 150 " | " | " | 140 | 70 | 59 | 51 | 43 | 38 | 33 | 18 | 34 | 33 | 15 | 37 | 43 | 51 |

| For Distance of | PER HUNDRED POUNDS. | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Brick, minimum C. L. 40,000 lbs. [See Note 4.] | | Corn, Oats, Corn Meal, Hominy, Grits, Hominy Feed, Chaff, Screenings, Bran Feed and Mill Stuff | | Flour, In Sacks | | Flour, in Barrels, Per Barrel | | Hay, Native Grown, minimum C. L. 10,000 lbs. [See Note 5.] | | Cow Peas, Native Grown, min. C. L. 30,000 lbs. [See Note 7.] | | Corn, Native Grown, C. L. [See Note 6.] | | Hanging and Cotton Ties, sin or mixed, C. L. 30,000 lbs. mix | | 1 ltr. L. C. L. packed | | Fruits and Vegetables, Domestic | | Rosin, C. L. [See Note 2.] | | Turpentine in Bbls. 50 to Tank Car, C. L. [See Notes 1 and 3.] | | Wool. | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | In Bales. | In Bales. |
| | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | CL | LCL | | |
| 5 miles or less | 2 | 3 | 5 | 5 | 8 | 8 | 16 | 16 | 4 | 6 | 4 | 5 | 4 | 10 | 10 | 6 | 17 | 10 | 12½ | 5 | 6 | 18 | 15 | | | | | |
| 10 " and over 5 | 2 | 3 | 6 | 6 | 8 | 8 | 16 | 16 | 4 | 7 | 4 | 6 | 4 | 10 | 10 | 6 | 17 | 10 | 12½ | 5 | 6 | 18 | 15 | | | | | |
| 15 " " " 10 | 2½ | 3½ | 7 | 7 | 8 | 8 | 16 | 16 | 5 | 9 | 5 | 7 | 5 | 11 | 11 | 6½ | 17½ | 11 | 13½ | 6 | 6½ | 21 | 20 | | | | | |
| 20 " " " 15 | 2½ | 3½ | 7 | 7 | 8 | 8 | 16 | 16 | 5 | 10 | 5 | 7 | 5 | 12 | 12 | 7½ | 17½ | 12 | 15 | 6 | 7 | 28 | 21 | | | | | |
| 25 " " " 20 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 6 | 12 | 6 | 8 | 6 | 13 | 13 | 7½ | 18 | 12 | 15 | 7 | 7½ | 28 | 21 | | | | | |
| 30 " " " 25 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 7 | 13 | 7 | 8 | 7 | 13 | 13 | 8 | 18 | 13 | 16 | 8 | 8 | 28 | 21 | | | | | |
| 35 " " " 30 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 8 | 14 | 8 | 8 | 8 | 13 | 14 | 8 | 18½ | 14 | 17½ | 8½ | 9 | 33 | 21 | | | | | |
| 40 " " " 35 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 8 | 15 | 8 | 8 | 8 | 13 | 14 | 8½ | 18½ | 15 | 19 | 9 | 9 | 33 | 21 | | | | | |
| 45 " " " 40 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 8 | 16 | 8 | 8 | 8 | 13 | 14 | 8½ | 19 | 16 | 20 | 9½ | 10 | 38 | 23 | | | | | |
| 50 " " " 45 | 3 | 4½ | 8 | 8 | 8 | 8 | 16 | 16 | 8 | 16 | 8 | 8 | 8 | 13 | 14 | 9 | 19 | 17 | 21 | 10 | 10 | 38 | 23 | | | | | |
| 55 " " " 50 | 4 | 6 | 10 | 12 | 12 | 18 | 24 | 32 | 10 | 17 | 10 | 12 | 9 | 13 | 14 | 9 | 19½ | 18 | 22½ | 10½ | 11 | 43 | 28 | | | | | |
| 60 " " " 55 | 4 | 6 | 10 | 13 | 12 | 18 | 24 | 32 | 10 | 18 | 10 | 13 | 10 | 13 | 14 | 9½ | 20 | 19 | 23½ | 11½ | 11 | 43 | 28 | | | | | |
| 65 " " " 60 | 4 | 6 | 10 | 13 | 12 | 18 | 24 | 32 | 10 | 18 | 10 | 13 | 10 | 13 | 14 | 10 | 20 | 19 | 23½ | 12 | 12 | 43 | 38 | | | | | |
| 70 " " " 65 | 4 | 6 | 10 | 14 | 12 | 18 | 24 | 32 | 10 | 18 | 10 | 14 | 10 | 13 | 14 | 10½ | 20 | 19 | 23½ | 12 | 12 | 43 | 38 | | | | | |
| 75 " " " 70 | 4 | 6 | 10 | 14 | 12 | 18 | 24 | 32 | 10 | 19 | 10 | 14 | 10 | 13 | 14 | 10½ | 20½ | 20 | 25 | 12½ | 13 | 48 | 41 | | | | | |
| 80 " " " 75 | 4 | 6 | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 19 | 10 | 15 | 10 | 13 | 14 | 11 | 20½ | 21 | 26 | 13 | 13 | 48 | 41 | | | | | |
| 85 " " " 80 | 4 | 6 | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 11 | 21 | 21 | 26 | 13½ | 14 | 48 | 42 | | | | | |
| 90 " " " 85 | 4 | 6 | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 11½ | 21 | 22 | 27½ | 14 | 14 | 48 | 42 | | | | | |
| 95 " " " 90 | 4 | 6 | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 11½ | 21½ | 22 | 27½ | 14½ | 15 | 48 | 43 | | | | | |
| 100 " " " 95 | 4½ | 6½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12 | 21½ | 23 | 28½ | 15 | 15 | 48 | 43 | | | | | |
| 110 " " " 100 | 4½ | 6½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12½ | 22 | 24 | 30 | 15 | 16½ | 53 | 45 | | | | | |
| 120 " " " 110 | 4½ | 6½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12½ | 23 | 25 | 31 | 15 | 17 | 53 | 45 | | | | | |
| 130 " " " 120 | 4½ | 6½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12½ | 24 | 26 | 32½ | 15 | 17½ | 58 | 46 | | | | | |
| 140 " " " 130 | 4½ | 6½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12½ | 25 | 26 | 32½ | 15 | 18 | 58 | 46 | | | | | |
| 150 " " " 140 | 5 | 7½ | 10 | 15 | 12 | 18 | 24 | 32 | 10 | 20 | 10 | 15 | 10 | 13 | 14 | 12½ | 25 | 27 | 33½ | 15 | 18 | 58 | 46 | | | | | |

† See Special Commodity rates, page 5.

| For Distance of | Per Hundred Pounds. | | | | | | | | | | | | | | | | | | | | | | Per Car | Per Gal. | Per 100 Pounds. | | | | | | Per Bale | Per Ton 2,000 lbs. | Per 100 lbs. | Per Car | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | (Fertilizers, C. L. | | Iron, Pig, Scrap, and Railroad. (See Note 3.) | | | | Slate, Salt, Cement, Lime, Fire ware, Tan Bark straight C. L. | | Ores, Sand, Clay, Stone, (Charcoal) straight C. L. | | | | Lumber, min. C. L. 24,000 lbs. (See Note 4.) | | | | Laths, Shingles, Staves | | | | Sawdust, C. L. | Wood, C. L. (See Note 10) | *Carbon Soap C. L. 24,000 lbs. minimum | C. L. for planting purposes | Decorticated Cotton Seed | | Cotton, baggings or Jute Cotton, C. L. minimum quantity | | Cotton, in Bales, any quantity | Coal and Coke, C. L. 12 tons min. | Cattle, L. C. L. (See Note 11) | Live Stock, released. (See Notes 8 and 9.) Horses and Mules | | Cattle, Hogs and Sheep | | Circus Outfit. (See Note 6.) | |
| | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | C. | L. | | | | | | | | | | | | | | | | |
| 5 Miles or less..... | 3½ | 5 | 7½ | 4 | 7 | 4½ | 7½ | 3 | 4½ | 4 | 9 | | 5.00 | 50 | 4 | 5 | 8½ | 5 | 50 | 85 | 11 | 14.00 | | 8.00 | 15.00 | | | | | | | | | | | | |
| 10 " and over 5 | 3½ | 5 | 7½ | 4 | 7 | 4½ | 7½ | 3 | 4½ | 4 | 9 | | 6.00 | 60 | 4 | 6 | 8½ | 7 | 50 | 85 | 13 | 14.00 | | 8.00 | 15.00 | | | | | | | | | | | | |
| 15 " " " | 10 3½ | 5 | 8 | 5 | 9 | 4½ | 7½ | 3 | 4½ | 4 | 11 | | 7.00 | 70 | 5 | 7 | 9 | 8 | 60 | 90 | 16 | 15.00 | | 12.00 | 18.00 | | | | | | | | | | | | |
| 20 " " " | 15 3½ | 5½ | 8 | 6 | 10 | 5 | 7½ | 3½ | 4½ | 4 | 11½ | | 7.00 | 70 | 5 | 7 | 10½ | 9 | 75 | 95 | 18 | 16.00 | | 13.00 | 18.00 | | | | | | | | | | | | |
| 25 " " " | 20 4 | 5½ | 8½ | 6½ | 10½ | 5 | 8 | 3½ | 4½ | 4½ | 12 | | 8.00 | 80 | 5 | 8 | 10½ | 10 | 85 | 1.00 | 20 | 18.00 | | 14.00 | 18.00 | | | | | | | | | | | | |
| 30 " " " | 25 4½ | 5½ | 8½ | 6½ | 11½ | 5½ | 8 | 3½ | 4½ | 5 | 12 | | 8.00 | 80 | 6 | 9 | 11 | 11 | 1.00 | 1.05 | 21 | 20.00 | | 15.00 | 20.00 | | | | | | | | | | | | |
| 35 " " " | 30 4½ | 5½ | 8½ | 6½ | 12 | 5½ | 8½ | 4 | 6 | 5 | 12½ | | 8.50 | 85 | 6 | 9 | 11 | 12 | 1.10 | 1.10 | 23 | 23.00 | | 16.00 | 25.00 | | | | | | | | | | | | |
| 40 " " " | 35 4½ | 5½ | 8½ | 7 | 12½ | 5½ | 8½ | 4 | 6 | 5 | 12½ | | 8.50 | 85 | 6 | 9 | 12 | 13 | 1.25 | 1.15 | 25 | 25.00 | | 17.00 | 25.00 | | | | | | | | | | | | |
| 45 " " " | 40 5 | 6 | 9 | 7½ | 13½ | 5½ | 8½ | 4 | 6 | 5 | 13 | | 9.00 | 90 | 7 | 9 | 12 | 15 | 1.35 | 1.20 | 26 | 26.00 | | 17.00 | 27.00 | | | | | | | | | | | | |
| 50 " " " | 45 5 | 6 | 9 | 7½ | 13½ | 5½ | 8½ | 4½ | 6½ | 5 | 13½ | | 9.00 | 90 | 7 | 9 | 12½ | 16 | 1.50 | 1.25 | 27 | 27.00 | | 18.00 | 27.00 | | | | | | | | | | | | |
| 55 " " " | 50 5 | 6 | 9½ | 7½ | 14½ | 5½ | 9 | 4½ | 6½ | 5 | 14 | | 9.00 | 90 | 8 | 10 | 12½ | 17½ | 1.60 | 1.25 | 28 | 28.00 | | 19.00 | 29.00 | | | | | | | | | | | | |
| 60 " " " | 55 5 | 6½ | 9½ | 8 | 14½ | 6 | 9 | 4½ | 6½ | 6 | 14½ | | 9.00 | 90 | 8 | 10 | 13½ | 18 | 1.65 | 1.25 | 28 | 29.00 | | 20.00 | 29.00 | | | | | | | | | | | | |
| 65 " " " | 60 5 | 6½ | 9½ | 8½ | 15 | 6 | 9½ | 5 | 7 | 6 | 14½ | | 10.00 | 100 | 8 | 10 | 14 | 19 | 1.75 | 1.25 | 29 | 30.00 | | 21.00 | 32.00 | | | | | | | | | | | | |
| 70 " " " | 65 5 | 6½ | 9½ | 8½ | 15½ | 6½ | 9½ | 5 | 7½ | 6 | 15 | | 10.00 | 100 | 8 | 10 | 14½ | 20 | 1.85 | 1.25 | 29 | 32.00 | | 22.00 | 32.00 | | | | | | | | | | | | |
| 75 " " " | 70 5 | 6½ | 10½ | 8½ | 16½ | 6½ | 9½ | 5 | 7½ | 6½ | 15½ | | 10.25 | 102 | 8 | 10 | 14½ | 20 | 1.85 | 1.25 | 31 | 33.00 | | 23.00 | 34.00 | | | | | | | | | | | | |
| 80 " " " | 75 5 | 6½ | 10½ | 9 | 16½ | 6½ | 9½ | 5½ | 8 | 6½ | 16 | | 10.25 | 102 | 8 | 11 | 15½ | 20½ | 1.85 | 1.25 | 31 | 34.00 | | 24.00 | 34.00 | | | | | | | | | | | | |
| 85 " " " | 80 5 | 6½ | 10½ | 9½ | 17½ | 6½ | 10½ | 5½ | 8½ | 6½ | 16½ | | 10.50 | 105 | 8 | 11 | 15½ | 21 | 1.85 | 1.25 | 32 | 35.00 | | 24.00 | 35.00 | | | | | | | | | | | | |
| 90 " " " | 85 5 | 7 | 10½ | 9½ | 17½ | 6½ | 10½ | 5½ | 8½ | 6½ | 17 | | 10.50 | 105 | 8 | 11 | 16 | 21 | 1.85 | 1.25 | 32 | 35.00 | | 24.00 | 35.00 | | | | | | | | | | | | |
| 95 " " " | 90 5 | 7 | 11 | 9½ | 18 | 6½ | 10½ | 5½ | 8½ | 6½ | 17½ | | 10.75 | 120 | 8 | 11 | 16 | 21 | 1.85 | 1.25 | 33 | 36.00 | | 24.00 | 37.00 | | | | | | | | | | | | |
| 100 " " " | 95 5 | 7½ | 11 | 10 | 18 | 7 | 10½ | 6 | 9 | 6½ | 18 | | 10.75 | 120 | 8 | 12 | 17 | 21 | 1.85 | 1.25 | 33 | 36.00 | | 25.00 | 37.00 | | | | | | | | | | | | |
| 110 " " " | 100 5 | 7½ | 11½ | 10 | 18½ | 7½ | 11 | 6 | 9 | 6½ | 18½ | | 12.00 | 120 | 9 | 12 | 17½ | 21½ | 1.90 | 1.25 | 34 | 38.00 | | 25.00 | 38.00 | | | | | | | | | | | | |
| 120 " " " | 110 5 | 7½ | 11½ | 10 | 18½ | 7½ | 11½ | 6 | 9 | 7 | 18½ | | 12.00 | 120 | 9 | 12 | 17½ | 22 | 2.00 | 1.25 | 35 | 39.00 | | 25.00 | 39.00 | | | | | | | | | | | | |
| 125 " " " | 120 5 | 8 | 12 | 10 | 18½ | 7½ | 11½ | 7 | 10½ | 7 | 18½ | | 13.00 | 130 | 9 | 12 | 17½ | 22 | 2.00 | 1.25 | 36 | 40.00 | | 26.00 | 40.00 | | | | | | | | | | | | |
| 130 " " " | 125 5 | 8 | 12 | 10 | 18½ | 7½ | 11½ | 7 | 10½ | 7 | 18½ | | 13.00 | 130 | 9 | 12 | 17½ | 22 | 2.00 | 1.25 | 36 | 40.00 | | 26.00 | 40.00 | | | | | | | | | | | | |
| 140 " " " | 130 5 | 8 | 12 | 10 | 18½ | 7½ | 11½ | 7 | 10½ | 7 | 18½ | | 14.00 | 140 | 9 | 13 | 17½ | 22 | 2.00 | 1.25 | 37 | 40.00 | | 26.00 | 41.00 | | | | | | | | | | | | |
| 150 " " " | 140 5 | 8 | 12 | 10 | 18½ | 7½ | 11½ | 7 | 10½ | 7½ | 18½ | | 14.00 | 140 | 10 | 13 | 17½ | 22 | 2.00 | 1.25 | 38 | 40.00 | | 27.00 | 42.00 | | | | | | | | | | | | |

† See Special Commodity rates, pages 5 and 6.

‡ For rates on Logs, Staves, Timber, Hoop Poles and Rough Blocks, C. L., to be manufactured and reshipped over the A. & V. Ry.; also on rough lumber to be dressed or dried and reshipped over A. & V Ry., see page 7.

# SPECIAL COMMODITY RATES.

| FROM | TO | ARTICLES | RATES—In cents per 100 lbs. unless otherwise specified. |
|---|---|---|---|
| Edwards ..... Miss. | All A. & V. Ry. stations, including Vicksburg, Jackson and Meridian, Miss. | Coffins, wooden, boxed or crated. Released, L. C. L.. | Apply 2d class rates. |
| All A. & V. Ry. local stations | Vicksburg ..... Miss.<br>Jackson ..... "<br>Meridian ..... " | Cotton Seed, L. C. L.. .....<br>Applies on remnants from season's business on shipments consigned to oil mill. | Apply C. L. rates. |
| Meridian ..... Miss. | A. & V. Ry. stations, Chunky, Miss. to Beechwood, Miss. inclusive. | Earthenware and Stoneware, loose, released, L. C. L..... | 30 |
| All A. & V. Ry. local stations | Vicksburg ..... Miss.<br>Jackson ..... "<br>Meridian ..... " | Empty Barrels, any quantity... | 17c. per bbl. |
| Hickory ..... Miss. | All A. & V. Ry. stations, including Vicksburg, Jackson, and Meridian, Miss. | Empty Egg Cases, L. C. L.... | 20 |
| All A. & V. Ry. local stations | Vicksburg ..... Miss.<br>Jackson ..... "<br>Meridian ..... " | Empty Soda, Mineral Water and Cider Cases and Bottles, returned..... | 10c. per case. |
| | | Empty Soda, Mineral Water and Cider Bottles, in barrels, returned ..... .....<br>These rates apply only on empty packages, returned, which have been shipped full by freight over A. & V. Ry. from Vicksburg, Jackson or Meridian, Miss. | 20c. per bbl. |
| Vicksburg ..... Miss. | Edwards ..... Miss.<br>Bolton..... " | Empty Fruit and Vegetable Boxes.<br>C. L. 20,000 lbs. min.....<br>L. C. L..... | 5<br>25 |
| Jackson ..... Miss.<br>Meridian ..... " | All A. & V. Ry. local stations | Fertilizers, (except Cotton Seed Meal) manufactured at Meridian or Jackson, Miss. C. L. 24,000 lbs. min.<br>75 Miles and over 20 .....<br>Over 75 Miles..... | 3½c. per 100 lbs.<br>1c. per ton per mile |
| Vicksburg ..... Miss. | Edwards ..... Miss. | Ice, C. L. 20,000 lbs. min. ....<br>To be used exclusively by Edwards Packing Co. in icing refrigerator cars. | 5 |

## SPECIAL COMMODITY RATES.

| FROM | TO | ARTICLES | RATES—In cents per 100 lbs. unless otherwise specified. |
|---|---|---|---|
| Vicksburg ..... Miss. | Edwards ..... Miss. | Oil, Fuel, in bbls. or tank cars, C. L. 30,000 lbs. minimum.. | 12 |
| Rankin ..... Miss.<br>Brandon ..... " | Jackson ..... Miss. | Stone, rough, C. L. 40,000 lbs. min. ..... | 2½ |
| Rankin ..... Miss. | Vicksburg ..... Miss. | Stone, C. L. 40,000 lbs. min... | 54c. per ton 2,000 lbs. |
| Greens ..... Miss.<br>Howells ..... " | Jackson ..... Miss. | Ties, Switch, C. L. 40,000 lbs. minimum ..... | 2 |
| Vicksburg ..... Miss.<br>Jackson ..... "<br>Meridian ..... " | All A. & V. Ry. local stations | Ice, C. L. ..... ..... | 7 |

## EXCEPTIONS TO CLASSIFICATION.

BUILDING MATERIAL: Lime, Cement, Plaster, Sand, Brick, Shingles, Lumber and Laths, when shipped in mixed C. L. 24,000 lbs. minimum, will be charged for at the highest rated C. L. article in the car. Owners to load and unload. Sash, Doors and Blinds not included in list of articles taking building material rates.

Wood, L. C. L. Same as Lumber, L. C. L.

# RATES ON

# Logs, Staves, Timber, Hoop Poles and Rough Blocks, C. L.,

**To be Manufactured and Reshipped Over the A. & V. Railway; Also on Rough Lumber to be Dressed or Dried and Reshipped Over A. & V. Railway.**

## BETWEEN STATIONS ON ALABAMA & VICKSBURG RAILWAY.

| DISTANCE | RATE IN CENTS PER 100 LBS. | DISTANCE | RATE IN CENTS PER 100 LBS. |
|---|---|---|---|
| 15 miles or less | 1¾ | 70 miles and over 65 | 3¾ |
| 20 miles and over 15 | 2 | 85 miles and over 70 | 4 |
| 25 miles and over 20 | 2 | 100 miles and over 85 | 4¼ |
| 30 miles and over 25 | 2¼ | 120 miles and over 100 | 4½ |
| 35 miles and over 30 | 2½ | 150 miles and over 120 | 5 |
| 40 miles and over 35 | 2¾ | | |
| 45 miles and over 40 | 3 | | |
| 50 miles and over 45 | 3 | | |
| 55 miles and over 50 | 3¼ | | |
| 65 miles and over 55 | 3½ | | |

Minimum weight. Shipments will be charged for at actual weight, with minimum of 30,000 pounds.

Agents are authorised to use rates shown above between all stations on the Alabama & Vicksburg Railway, except on shipments to

**Vicksburg, Miss., Jackson, Miss., Meridian, Miss.**

Shipments to above junction points will be waybilled and delivered at Lumber rates shown on page 4, and when the manufactured article is reshipped over A. & V. Railway agent will take up original expense bill covering movement of the rough material to their station and issue overcharge advice reducing freight charges on the rough material from original point of shipment on basis of above rates. Original expense bill must be attached to overcharge advice, and both forwarded to the auditor.

The manufactured article must be billed from point at which manufactured to final destination at regular tariff rate, and freight charges on the rough material to point at which manufactured must under no circumstances be billed against the manufactured article as "charges."

# NOTES.

NOTE 1. Turpentine in barrels, to be charged for at actual weight, including weight of packages, with a minimum of 24,000 lbs. to the car. Turpentine in tank cars, to be charged for at estimated weight of 7 pounds to the gallon, minimum weight to be based on full shell capacity of tank, even if tank is not full, but not less than 24,000 pounds. Tanks to be furnished by shipper or consignee. Shipper to load and unload both when in tanks and in barrels.

NOTE 2. On shipments of Rosin and Turpentine in barrels, shipped in mixed car loads of 24,000 lbs. minimum, between stations on A. & V. Ry., apply the current car load rate on each article.

NOTE 3. When in car loads of 24,000 lbs. minimum, the tariff rate for a ton of 2,000 lbs. will apply per ton of 2,268 lbs. on pig iron, and per ton of 2,240 lbs. on scrap and railroad iron.

NOTE 4. In estimating the freight on shipments of brick and lumber in mixed car loads the higher rate on the entire shipment will apply, basing the weight on the usual estimated weights of brick and lumber, with a minimum of 28,000 pounds to the car.

NOTE 5. Within rates on native grown hay, corn and cow peas apply only when shipments are accompanied by certificate from shipper or owner that same was grown in the State of Mississippi, and is for use between stations in Mississippi.

Current rates on native grown hay, C. L. will apply on mixed C. L. of native grown hay, corn and cow peas.

NOTE 6. The maximum valuation of live stock carried under the above rates will be limited to $150.00 per animal. For any increase of one hundred per cent or fraction thereof on such valuation, there will be an increase of fifty per cent in rate. Care must be taken to so advise shipper as to this and to ascertain from him at what valuations shipments are to be made and bills lading signed for.

Passenger cars belonging to and handled with Circuses will be charged at the rate of 75 cents per mile per car, including passengers with a minimum of $15.00 per movement for each car.

Persons in charge of live stock will be carried with the stock as follows: One man to pass free with each car and his name to be given on bill lading and way-bill by forwarding Agent. All persons thus passed free to be at their own risk of personal injury from any cause whatever, and the Railroad Company will not be responsible for any loss of their personal effects.

**A free pass will be given to one advance Agent.**

Above rates apply only when shipments are fully released, as per contract.

NOTE 7. Cattle, L. C. L., to be fed by owner at his expense and to be released as per contract, to be charged for on basis following estimated weights. Valuation not to exceed $100.00 for each animal.

Cattle not crated:

| | | |
|---|---|---|
| One cow | 1,600 lbs. | |
| Two cows | 2,800 " | |
| Each additional cow | 800 " | |
| Cow and Calf together | 1,800 " | |
| Yearling Cattle, actual weight, but not less than | 1,000 " | each. |
| Bull Calf, value limited to $25.00 | 1,600 " | |

Cattle, crated: ACTUAL WEIGHT.

Cattle not released, double released rate.

NOTE 8. Contracts for shipments of live stock must not be signed until the conditions thereof, particularly clause limiting value of stock, is thoroughly understood by shipper or party in charge. Agents are required to carefully carry out the provisions of this rule and should be prepared to certify to their having done so at any time the question may arise.

NOTE 9. On shipments of live stock having points of origin and destination both in the State of Mississippi, shippers will be allowed to double deck cars in accordance with an Act of the Legislature of Mississippi, effective March 18th, 1896, entitled: "An Act to amend Section 3564 of the annotated Code of 1892 in relation to shipping live stock," as follows:

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## NOTES.—Continued.

"Right of shippers of live stock. A person who has chartered a car for the purpose of transporting live stock shall have the right to ship in the same car, at his own risk, different kinds of live stock. The shipper shall have the right to load said car by separating his stock with gates or bars, or by putting upper decks at his own expense and without injury to the cars; and the shipper shall be responsible for all damages that may occur by reason of its being so loaded. Any railroad company refusing without sufficient reason to move or transport a car so loaded, shall be liable to the party injured thereby to double damages, to be recovered before any court having jurisdiction thereof."

Rates on such mixed or double decked cars between points within the State of Mississippi will be the same as now authorized by Mississippi Tariffs on live stock in car loads.

NOTE 10. On Cord Wood, C. L., apply minimum 10 cords, maximum 12 cords. When cars are loaded above maximum, double the within rates will be charged on the excess.

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## MINIMUM CHARGE.

Single shipments weighing less than 100 lbs. will be assessed at actual weigh' with a minimum charge of twenty-five cents.

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## IMPORTANT NOTICE.

Rates between Vicksburg, Jackson and Meridian, Miss. on all classes and commodities, will be observed as maxima on business between A. & V. Ry. local stations intermediate.

47 EXHIBIT B TO AFFIDAVIT OF C. C. HARVEY.

ALABAMA AND VICKSBURG RAILWAY COMPANY
v.
RAILROAD COMMISSION.

Alabama and Vicksburg Railway Company.

Division of Expenses Year Ending June 30th, 1903.

Division of Expenses Between Passenger and Freight, 1902-1903.

| Expenses (operating). | Passenger. | Freight. | Total. |
|---|---|---|---|
| Conducting transportation... | $91,319.79 | $244,921.29 | $336,241. |
| Maintenance of way..... | 82,459.09 | 161,142.36 | 243,601.45 |
| Maintenance of equipment.. | 54,648.39 | 149,984.07 | 204,632.46 |
| General expenses ..... | 12,185.44 | 23,812.90 | 35,998.34 |
| Taxes ..... | 9,647.25 | 18,852.75 | 28,500.00 |
| Total expenses..... | $250,259.96 (29.48%) | 598,713.37 (70.52%) | 848,973.33 |
| Taxes. ..... | 9,647.25 | 18,852.75 | 28,500.00 |
| Net earnings..... .. | $240,612.71 | 579,860.62 | 820,473.33 |

(#) Including taxes.
(?) Excluding taxes.

| Locomotive mileage. | Total. | | |
|---|---|---|---|
| Passenger ..... | 218,350 | 223,340 or 33.85% | |
| Freight..... | 275,100 | 436,436 or 66.15% | |
| Switching..... | 166,326 (#) | | |
| Total operating mileage.. ..... .. | 659,776 | 659,776 | 100 % |

(#) 3% passenger.
97% freight.

48 Conducting Transportation.

| Superintendence. | Passenger. | Freight. | Total. |
|---|---|---|---|
| Gen'l freight agent's office .. ..... | ..... | $6,023.89 | $6,023.89 |
| Gen'l passenger agent's office.. .... .... | $2,989.29 | ..... . | 2,989.29 |
| Other superintendence..... | 3,185.06 | 6,370.14 | 9,555.20 |
| Engineers and firemen..... ..... | 10,784.98 | 29,253.64 | 40,038.62 |
| Hostlers, wipers and callers... ... .. .. | 1,414.00 | 4,049.26 | 5,463.26 |
| Fuel for locomotives ..... .. ... . | 13,629.00 | 44,757.71 | 58,386.71 |
| Water supply of locomotives..... | 1,298.00 | 3,645.09 | 4,943.09 |
| Oil, tallow and waste for locomotives.... | 344.00 | 1,381.56 | 1,725.56 |
| Other supplies for locomotives..... | 545.00 | 1,563.02 | 2,108.02 |
| Conductors ... ..... ..... ..... | 4,361.00 | 8,511.50 | 12,872.50 |
| Brakemen and baggagemen..... | 5,770.00 | 10,569.50 | 16,339.50 |
| Train supplies and expenses..... | 5,752.00 | 1,924.19 | 7,676.19 |
| Café car expenses ..... ..... ..... | 2,852.18 | ..... | 2,852.18 |
| Switchmen, flagmen and watchmen..... | 3,846.05 | 15,384.22 | 19,230.27 |
| Telegraph expenses..... | 3,059.84 | 6,119.70 | 9,179.54 |
| Station agents and clerks..... | 7,323.16 | 29,254.94 | 36,578.10 |
| Station labor..... ..... | ..... | 13,212.04 | 13,212.04 |
| Station supplies and expenses..... | 1,453.13 | 2,906.28 | 4,359.41 |
| Switching charges..... ..... | ..... | 1,507.00 | 1,507.00 |

| | | | |
|---|---|---|---|
| Car mileage, sleeping cars | 2,024.72 | ..... | 2,024.72 |
| Car mileage, passenger cars | 4,557.87 | ..... | 4,557.87 |
| 49 Car mileage freight cars | ..... | 9,856.79 | 9,856.79 |
| Hire of equipment | 308.98 | 1,235.96 | 1,544.94 |
| Loss and damage—baggage | 328.36 | ..... | 328.36 |
| Loss and damage—freight | ..... | 10,221.28 | 10,221.28 |
| Loss and damage—property | 2,881.00 | 9,297.66 | 12,178.66 |
| Loss and damage—stock | 4,645.00 | 5,409.45 | 10,055.45 |
| Injuries to persons | 7,928.00 | 7,004.61 | 14,932.61 |
| Clearing wrecks | 629.00 | 2,076.85 | 2,705.85 |
| Advertising | 444.54 | ..... | 444.54 |
| Outside agencies | 3,977.27 | 5,263.18 | 9,240.45 |
| Rents for tracks yards and terminals | 808.40 | 1,597.78 | 2,388.18 |
| Rents of buildings and property | 1,035.00 | 2,022.63 | 3,057.63 |
| Stationery and printing | 2,070.06 | 4,140.13 | 6,210.19 |
| Other expenses | 189.64 | 379.29 | 568.93 |
| Total conducting transportation | $91,319.79 | $244,921.29 | $336,241.08 |

Maintenance of Way.

| | Passenger. | Freight. | Total. |
|---|---|---|---|
| Total maintenance of way | $82,459.09 | $161,142.36 | $243,601.45 |

Maintenance of Equipment.

| | Passenger. | Freight. | Total. |
|---|---|---|---|
| Superintendence | $655.47 | $1,280.93 | $1,936.40 |
| Locomotive—repairs | 7,401.00 | 25,139.20 | 32,540.20 |
| Locomotives—reserve for renewal | 3,723.00 | 7,277.00 | 11,000.00 |

50 Maintenance of Equipment—Con.

| Superintendence. | Passenger. | Freight. | Total. |
|---|---|---|---|
| Passenger cars | 39,815.38 | ..... | 39,815.38 |
| Freight cars | ..... | 100,805.56 | 100,805.56 |
| Freight cars—foreign Co.'s | ..... | 5,799.36 | 5,799.36 |
| Freight cars (system) | ..... | 3,714.76 | 3,714.76 |
| Work cars | ..... | ..... | 7,874.27 |
| Shop machinery and tools | 3,053.54 | 5,967.26 | 233.15 |
| Stationery and printing | ..... | ..... | 415.09 |
| Other expenses | ..... | ..... | 498.29 |
| Total maintenance of equipment | $54,648.39 | $149,984.07 | $204,632.46 |

General Expenses.

| | Passenger. | Freight. | Total. |
|---|---|---|---|
| Salaries of gen'l officers | ..... | ..... | $5,869.44 |
| Salaries clerks and attendants | ..... | ..... | 16,246.37 |
| Gen'l office expenses and supplies | ..... | ..... | 1,119.56 |
| Insurance | $12,185.44 | $23,812.90 | 4,014.67 |
| Law expenses | ..... | ..... | 6,565.28 |
| Stationery and printing | ..... | ..... | 1,650.77 |
| Other expenses | ..... | ..... | 532.25 |
| Taxes | 9,647.25 | 18,852.65 | 28,500.00 |
| Total general expenses | $21,832.69 | $42,665.65 | 64,4984.34 |

51 Affidavit of T. F. Steele & Exhibit "B" Thereto.

Personally came and appeared before me, the undersigned notary public, in and for the parish of Orleans and State of Louisiana, T. F. Steele, who being duly sworn deposes and says that he is, and has been for a number of years, the general freight agent of the Alabama & Vicksburg Railway Company; that the tariff rate of freight charges of said company, marked Exhibit "A" to the affidavit of C. C. Harvey president, is the true tariff of charges which has been in force upon said railroad since July 20th, 1902, and is still in force, and that the said charges are true and real charges made to all shippers upon the line of said railroad.

Affiant further states that the rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian, contemplated by the order of the Mississippi railroad commission, complained of in the above proceeding is unreasonable and unjust in view of the following facts:

1. It is lower than approved by the railroad commission of Mississippi on any other commodity for the same distance.

2. That except as to brick and cord wood, it is lower than any other rate as approved by said railroad commission for a distance of fifty miles or something over one third of the distance for which the 3½ cents per hundred pounds on grain and grain products is contemplated by the order of said commission.

3. It is lower than the rates on the same commodities for the same distance in the States of Texas, Louisiana, Alabama, Georgia, North Carolina, South Carolina, Tennessee, Kentucky or Arkansas, in which States the rate ranges from 9 cents to 27½ cents per hundred pounds, except in one instance. The rate from Louisville to Henderson, Kentucky, a distance of 149 miles, with all the year round river competition on the Ohio river, where the rate is 6 cents per hundred pounds.

4. That with but few exceptions, and those on the lowest commodities, a higher rate than 3½ cents per hundred pounds,
52 applies for a distance of 5 miles or less.

5. That said 3½-cent rate from Vicksburg to Meridian is lower than rates in effect between all points on the Mississippi river having steamboat competition, the minimum rate of the steamboat being 10 cents per hundred pounds.

6. That while it is true that the lowest rates in existence are made by schooners or small sailing vessels, the rate of 3½ cents per hundred pounds contemplated by the order of said commission is lower than any rate on the same commodity made in competition with these water craft; that schooners ply between New Orleans and Manderville, La., the distance by rail being 59 miles, and that the rail rate on grain is 6 cents, and on meal, hominy and grits in barrels, the rate is 7½ cents per hundred pounds; that there is schooner competition between New Orleans and Bay St. Louis, Gulfport and

Mobile, and that the rail rate on grain to the first two points mentioned is 9 cents and to Mobile 10 cents per hundred pounds from New Orleans.

7. Affiant further states that the rates on interstate grain to Meridian are not only reasonable but low as compared with the rates to other competitive junction points, as the attached statement of the rates filed with the Interstate Commerce Commission, marked Exhibit B, hereto, will plainly show; that except to Vicksburg, where rates are made to meet river competition, Meridian enjoys lower rates than any other junction or competitive point, except Jackson, to which point the rates are made the same; that neither Vicksburg or Meridian are in a grain growing country and both get their grain from the same market; that is to say, St. Louis and Kansas City, the bulk of it from St. Louis; that the all rail rate on grain from St. Louis to Meridian 505 miles, is 14 cents per hundred pounds and from St. Louis to Vicksburg, 537 miles, 12 cents per hundred pounds, and from St. Louis to Birmingham, 542 miles, is 25 cents per hundred pounds; from St. Louis to Chattanooga, 484 miles, is 24 cents per hundred pounds, the rate from St. Louis to
53 Meridian not being in line with rates from that point to the other inland towns but much lower, and especially lower than that to Chattanooga which has water connection with St. Louis; that the low rate given to Vicksburg is made by the Mississippi river, and that the exceptionally low existing rate for Meridian is only 2 cents in excess of that to Vicksburg, and was put in to enable Meridian to compete with other points in the territory which have the benefit of the Mississippi River competition; that there is only an occasional movement of grain from St. Louis to Vicksburg by river, the all rail rate of 12 cents from St. Louis to Vicksburg being so low as to exclude boats from participating in the business, except under unusual and very favorable conditions; that the cost of transportation of the commodity is question from St. Louis to Vicksburg being 12 cents, a rate of 3½ cents from Vicksburg to Meridian, which would make the entire rate of 15½ cents via Vicksburg, would show an excess of 1½ cents for such entire rate over the all rail rate of 14 cents from St. Louis to Meridian now in force. And affiant states as a fact going to show that 3½ cents rate applied for by Meridian board of trade is really designed to effect the interstate all rail rate; that the Mobile & Ohio Railroad Company was invited by said Meridian board of trade to attend the conferences with reference to rates to Meridian growing out of said application. Affiant further states in regard to the 7 cent rate from Vicksburg to Hattiesburg and Laurel, referred to by the Meridian board of trade as a reason for granting its application for 3½ cent rate to Meridian that said 7 cent rate was ordered by the commission over the protest of the Alabama & Vicksburg Railway Company, and is unreasonably low and unremunerative; but that that rate is considerably higher, in proportion than the 3½ cents rate complained of; considering mileage and all other conditions; that the distance from Vicksburg via

Meridian to Laurel is 199 miles, and 7 cents per hundred pounds, would yield 7 mills per ton per mile; that from Vicksburg
54 via Meridian to Hattiesburg the distance is 227 miles and 7 cents per hundred pounds, would yield 6 mills per ton per mile; that the short line distance from Vicksburg to Laurel and Hattiesburg is 134 miles and the 7 cents per hundred pounds would yield over 1 cent per ton per mile, while the rate of 3½ cents per hundred pounds from Vicksburg to Meridian, a distance of 142 miles, yields less than 5 mills per ton per mile; that the 7 cent rate to Hattiesburg and Laurel is the lowest that has ever been issued by the commission on these commodities for a similar distance, and the 3½ cents rate to Meridian is lower than that.

T. F. STEELE.

Sworn to and subscribed before me this 29th day of February, 1904.

[SEAL.] PURNELL M. MILNER,
Notary Public.

EXHIBIT "B."

| To— | From— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Kansas City. | | | St. Louis. | | | Cairo. | | | Memphis. | | |
| | Miles | W. | C. | Miles | W. | C. | Miles | W. | C. | Miles | W. | C. |
| Vicksburg, Miss..... | 704 | 19 | 17 | 537 | 17 | 12 | 389 | 15 | 13 | 220 | 9 | 9 |
| Jackson " ..... | 695 | 22 | 20 | 518 | 20 | 14 | 370 | 18 | 15½ | 211 | 14 | 11½ |
| Meridian " ..... | 733 | 22 | 20 | 505 | 20 | 14 | 357 | 18 | 15½ | 249 | 14 | 11½ |
| Columbus " ..... | 693 | 26 | 22 | 441 | 25 | 18 | 287 | 20 | 18 | 179 | 16 | 14 |
| Birmingham, Ala..... | 735 | 26 | 24 | 642 | 25 | 25 | 394 | 20 | 20 | 251 | 16 | 16 |
| Atlanta, Ga..... | 932 | 30 | 28 | 632 | 29 | 29 | 484 | 24 | 24 | 418 | 20 | 20 |
| Selma, Ala. .. | 835 | 26 | 24 | 615 | 25 | 25 | 467 | 20 | 20 | 396 | 16 | 16 |
| Montgomery, " ... | 830 | 26 | 24 | 638 | 25 | 25 | 490 | 20 | 20 | 346 | 16 | 16 |
| Columbus, Ga.. ..... | 980 | 32 | 30 | 689 | 31 | 31 | 551 | 26 | 26 | 408 | 22 | 22 |
| Chattanooga, Tenn.... | 794 | 25 | 23 | 484 | 24 | 24 | 336 | 19 | 19 | 310 | 15 | 15 |

W—Wheat, car load ..... } In cents per 100 lbs.
C—Corn and oats, car load }

Filed April 22/1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

55 Affidavit of Larz A. Jones.

Personally came and appeared before me, the undersigned notary public, in and for the parish of Orleans and State of Louisiana, Larz A. Jones, who being duly sworn, deposes and says on oath that he is

now and has been for a number of years the auditor of the Alabama and Vicksburg Railway Company; that the rate of said company on grain and grain products from Vicksburg to Meridian is already reasonably low and that the reduction of the same to 3½ cents per 100 lbs. which would be a reduction of 41% would work a loss to the railway company, and if applied as it might be with equal justice to the other earnings accounts, would result in a reduction of revenues of $471,000.00 and would not leave sufficient receipts to provide for the operating expenses by $170,000.00; that affiant has read that portion of the affidavit of C. C. Harvey, president, going to show that the enforcement of said 3½ cents as ordered by the Mississippi railroad commission would leave no profits whatever to said company and on the contrary result in a loss, and being familiar with the subject, affiant adopts the averment of said affidavit and makes the same a part hereof as fully as if herein set forth.

Affiant also reaffirms and makes a part hereof his affidavit filed by said railroad company in answer to the rule taken by the Meridian board of trade upon said company for information in certain particulars, which said affidavit is included in Exhibit "A" to the bill in the above cause and he makes the same a part hereof as fully and to the same extent as if the allegations thereof were herein repeated.

LARZ A. JONES.

Sworn to and subscribed before me this 9th day of March, A. D. 1904.

[SEAL.] PURNELL M. MILNER,
Notary Public.

Filed April 22/ 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

56 Answers of C. C. Harvey, T. F. Steele, & Larz A. Jones to Cross-interrogatories for Defendants.

C. C. HARVEY, T. F. STEELE and LARZ A. JONES, answer the cross-interrogatories herein propounded to them as follows, to-wit:

1 Q. Just prior to July 20, 1902, and up to that time, that is to say, before your company agreed to the rebilling rate from Vicksburg to Meridian of 3½c., what rate of freight on carload lots rebilled at Vicksburg from the V. S. & P. R. R. from Vicksburg to Meridian was your company receiving?

Steele.—A. Just prior to July 20, 1902, and before the Alabama & Vicksburg Railway Company has agreed to the rebilling rate of 3½c. per hundred pounds from Vicksburg to Meridian, the rate of freight in carload lots on grain and grain products rebilled at Vicksburg from the Meridian, Shreveport & Pacific railway, from Vicks-

burg to Meridian, was 5c. per hundred pounds. From March 12, 1900, to December 12, 1901, the rate was 3½c. per hundred pounds, but it was found that said rate was not remunerative, and on or about December 12, 1901, it was fixed to 5c. per hundred pounds, which was a proper rate, and remained at that price until July 23, 1902, when, in order to endeavor to meet the wishes of the Mississippi railroad commission, the rebilling rate from Vicksburg to Meridian was reduced to 3½c. per hundred pounds.

2 Q. Did not your company give to Vicksburg dealers the benefit of the rebilling rate of 3½c. from Vicksburg to Meridian while it was in force, for shipments of grain to Meridian that were not on a continuous passage and in the same car? Please answer fully as to this. If you have no personal knowledge refer us to the agent or agents who can answer this question upon personal knowledge.

57 Harvey & Steele.—A. The rebilling rate of 3½c. per hundred pounds was given to the Vicksburg dealers on shipments which were not on continuous passage, which privileges was equally open to Meridian dealers. Only 50 cars were handled for both Meridian and Vicksburg dealers on the rebilling rate for the year ending June 30, 1903. The advantage of the rebilling rate over the proposed flat rate was an empty car was always secured for an outbound shipment, and this followed whether the shipment was continuous or not.

3 Q. Just prior and up to July 20, 1902, what was the rate on grain and grain products from Vicksburg to Meridian in carload lots? Answer this both as to rebilling rate and open rate.

Steele.—A. Just prior to July 23, 1902, the rebilling rate on grain and grain products from Vicksburg to Meridian was 5c. per hundred pounds. The local distance tariff rate as approved by the railroad commission on shipments originating at Vicksburg to Meridian, was 10c. per hundred pounds. This rate of 10c. per hundred pounds, however, was not available for the transportation of grain and grain products from Vicksburg to Meridian, as the Meridian dealers could transport such grain and grain products direct from the grain producing points at a much lower through rate, than the through rate to Vicksburg plus the 10c. local rate.

4 Q. Has your company not been operating in connection with other roads as to interstate shipments to Meridian on the basis of that city's being a competitive point, and, because of dissimilar conditions, entitled to lower rates proportionately for long than short hauls to other points? In other words, has your company not recognized and conceded to Meridian the advantage of a competitive and distributing points?

58 Harvey & Steele.—A. Yes, we have recognized and conceded to Meridian the advantages of a competitive point, it having other roads reaching there, and have made reasonable and just rates. It was with this in view that the rebilling rate of 5c. per hundred pounds on grain and grain products from Vicksburg to Meridian was put in December 12, 1901, as against the regular

tariff rate of 10c. per hundred pounds after it had been evident that the rebilling rate of 3½c. per hundred pounds was unremunerative.

5 Q. Is not the Alabama & Vicksburg Ry. a separate and distinct line from the Vicksburg, Shreveport & Pacific?

Harvey, Steele, & Jones.—A. The Alabama & Vicksburg Railway Company is a separate and distinct line from the Vicksburg, Shreveport & Pacific Railway Company, but said two railway companies operate their lines under intimate relations of interchange of traffic and division of rates for their mutual benefit.

6 Q. What rate or rates have been in force between your company and the V. S. & P. since July 20, 1902, on carload shipments between Vicksburg and Meridian, originating on the line of the V. S. & P.?

Steele.—A. No shipment of grain and grain products originate on the Vicksburg, Shreveport & Pacific railway. On the through shipments of grain and grain products received at Vicksburg, either via Monroe or Shreveport, over the Vicksburg, Shreveport & Pacific railway, and forwarded to Meridian a rebilling of 3½c. per hundred pounds is charged by the Alabama & Vicksburg Railway Company.

7 Q. What traffic arrangement is there between you as to the division of such freights?

59 Harvey, Steele, & Jones.—A. The traffic arrangement between the Vicksburg, Shreveport & Pacific Railway Company and the Alabama & Vicksburg Railway Company as to divisions of such through freights on grain and grain products is on a mileage basis with through rates so adjusted as in no case to allow the Alabama & Vicksburg railway less than a minimum of 3½c. per hundred pounds.

8 Q. Since July 20, 1902, and also since this order was passed in November, 1903, is it not true that you have been giving a special rate on carload lots from Vicksburg to Meridian originating on the V. S. & P.? What is the rate and state fully the facts in connection with it?

Steele.—A. As above stated, no shipments of grain and grain products originate on the Vicksburg, Shreveport & Pacific railway, and since July 23, 1902, and the order referred to of November 1903, it is not true that the Alabama & Vicksburg Railway Company has given any special rate upon grain and grain products from Vicksburg to Meridian, in carload lots, delivered to it by the Vicksburg, Shreveport railway. The only rate charged on grain and grain products billed to Vicksburg and reforwarded is the rebilling rate of 3½c. per hundred pounds.

9 Q. What pro rata does your road receive on the 7c. rate on shipments from Vicksburg via Meridian to Hattiesburg? Answer this also as to Laurel?

Steele & Jones.—A. The pro rata received by the Alabama & Vicksburg Railway Company of the 7c. rate on shipments from Alabama via Meridian to Hattiesburg, Miss., or Laurel, Miss., is $4\frac{1}{10}$c. per hundred pounds. The rate of 7c. on grain and grain prod-

ucts to Hattiesburg and Laurel was put in by the Mississippi railroad commission and over our protest as being unremunerative. This rate however, as shown allows the Alabama & Vicksburg Railway Company a greater revenue than the proposed rate of
60 3½c. per hundred pounds.

10 Q. In regard to the cost of moving freight, is not the cost on through shipments much less than for local freight, and is this not a well recognized rule in railroad circles?

Harvey & Steele.—A. The cost of moving through shipments, that is shipments received from other roads in through cars, is much less than the cost of moving local *local* freights, that is freight between any two points on the Alabama & Vicksburg railway, as the latter would necessitate cars being provided therefor, extra switching being preferred, and increased terminal expense. If this question refers to grain and grain products brought to Vicksburg in barges to be reshipped over the Alabama & Vicksburg railway, such freight would be regarded, in so far as said railway is concerned, as local freight, and the cost of moving it, that is furnishing cars to receive it, switching said cars, would be even greater than the expense of handling other local freight.

11 Q. Is not your estimate of the cost of freight per freight train mile, viz: $2.176 based on all the freight business, local and through freight?

Harvey & Jones.—A. Our estimate of the cost of freight per freight train mile, viz: $2.176, is based on all freight business, local and through and is the average of all freights.

12 Q. In the total of freight expenses, viz: $598,713.37, have you not apportioned to freight the larger part of your fixed charges? Where does the fixed charges, interest on bonds, stocks, dividends, etc., enter into your tabulated statement? What is the basis of your apportionment? Are they apportioned between passenger and freight traffic in the same proportion as the taxes are apportioned?

61 Harvey & Jones.—A. The total freight expenses, viz: $598,713.37, as shown by the statement filed with the original affidavit of C. C. Harvey, does not include anything for fixed charges, such as interest on bonds, etc. The expenses, as shown by said statement, are exclusively for conducting transportation, maintenance of way, maintenance of equipment, general expense and taxes.

The fixed charges, interest on bonds, dividends on stock, etc., do not enter into the tabulated statement, as is clearly shown by said tabulated statement, which, as stated therein, includes the expenses merely of operation, maintenance and general expenses including taxes.

The basis if the apportionment of said expenses between passenger and freight traffic is the formula prescribed by the Interstate Commerce Commission, viz:

Expense incurred exclusively in the operation of freight depots,

freight trains, freight traffic, and maintenance of freight engines and freight cars is charged to freight expense.

Expense incurred exclusively in the operation of passenger depots, passenger trains, passenger traffic, and maintenance of passenger engines and passenger cars is charged to passenger expense.

The expense of employees engaged jointly in freight and passenger traffic is apportioned between the two accounts in proportion to the work done for each.

The expense of maintenance of way, general expenses, and taxes are apportioned on the basis of train mileage, that is, the percentage of those expenses represented by the percentage of freight train mileage to the total mileage is charged to freight expenses; the percentage of those expenses represented by the percentage of passenger train mileage to the total mileage is charged to passenger expenses. Freight train mileage for the year

62 1902–03 constituted 33.85% of the total train mileage.

Although the fixed charges are not included in the statement of operating expenses already referred to, they may be fairly divided between freight and passenger in the same proportion as the total operating expenses are. Under that basis the fixed charges (bond interest) chargeable to freight expenses amounted to $84,211.00 being 70.52% of $119,415.00 or 42.84 per freight train mile.

13 Q. What was the total operating expense, including the fixed charges, for the year ending June 30, 1903. We notice from the interstate commerce statistics that this total for the preceeding year was $880,675.00, and that your total earnings for the previous year were $1,011.42.84. How do these two items compare with the succeeding year's report?

Harvey & Jones.—A. The total operating expenses, fixed charges and taxes for the year ending June 30, 1903, were $1,009,797.00, as against $880,675.00 in the preceeding year.

The total gross earnings from operations for the year ending June 30, 1903, were $1,149,039.00 as against $1,014,482.00 for the preceeding year.

14 Q. Who made the return of the assessment for taxation of the A. & V. R. R. to the railroad commission of the State for the year 1903? Was not the entire valuation of all the assets of the railroad retured at less than $1,500,000.00? Please show just what it was valued at by you or the officer making the return to the commission? and state also how that valuation was arrived at?

Harvey & Jones.—A. The return of the assessment for taxation of the Alabama & Vicksburg Railway Company was made

63 to the railroad commission of the State of Mississippi for the year 1903 by Larz A. Jones, auditor. The valuation of the assets of the railway was returned at $1,488,421.00. This return was based upon the valuation fixed by the railroad commission for the previous year, to-wit: $9,000.00 per mile of main track and $2,250.00 per mile for side tracks, and local property assessed according to value. This local property was returned at the valuation fixed by

the railroad commission for the preceeding year, and proper additions and deductions were made to represent the actual changes in the local property.

15 Q. Now please state just what the total valuation of the assets were as reported to the Interstate Commerce Commission? What do you find the difference to be? Which is the true valuation?

Harvey & Jones.—A. No valuation of the said railway property as made to the Interstate Commerce Commission, nor has any request ever been made by the Interstate Commerce Commission for said information.

16 Q. How can you account for the fact that your company makes one sworn report of the valuation more than $3,200,000.00, and also shows net earnings more than enough to pay the fixed charges on that valuation, and yet values it before another tribunal at less than half that sum? Was this an oversight, or do you adopt a different basis for valuation?

Harvey & Jones.—A. We are not aware of the existence of any sworn report of the present valuation of the railway property being more than $3,200,000.00. There was made to the Interstate Commerce Commission a return showing that the cost of the road and equipment to said Alabama & Vicksburg Railway Company was $3,260,785.00. The cost of said property in no wise represents its actual value, which value presumably is the price which the
64 property would realize and which value is based upon the standard valuation of $9,000.00 per mile adopted and approved by the railroad commission.

17 Q. Will your method of keeping books, or accounts, and records enable you to show what are the gross receipts from intrastate business as distinguished from interstate business? What were these receipts for 1902–03, and how was the result arrived at?

Jones.—A. Our books, accounts and records do not show what were the separate gross receipts from intrastate and interstate business; but a close and accurate estimate thereof for the year 1902–03 could be prepared in the course of three or four weeks. This information was prepared for the year 1901–02, and is as follows:

| | |
|---|---|
| Total earnings | $1,150,546.00 |
| Intrastate earnings | 424,375.00 |
| Interstate earnings | 726,171.00 |

This statement was prepared from the records of the company showing freight interchanged to and from each connecting line, and deducting from the total of said business such shipments as originated on or were destined to points on connecting lines within the State. The remainder constitutes the interstate business. The freight moving between local stations together with that interchanged with connecting lines and destined to or received from points in Mississippi constitutes the intrastate business.

18 Q. In the answer to the rule of the company on file, Mr. Jones, your auditor, states that the State business was not quite 37 per cent.

of the total receipts. State if you know, what was included in the State business in that estimate? Was freight rebilled at either Vicksburg or Meridian for other points classed as State or interstate traffic? Was freight shipped from points in this State as
65 Meridian, to points in this State on other lines, as Laurel, included in State or interstate traffic? In other words, did you class as interstate traffic all traffic that went from you to other lines?

Jones.—A. The traffic between points in Mississippi, was considered intrastate business, whether or not a portion or all of the haul was on the Alabama & Vicksburg railway; as for example, a shipment from Jackson Miss., via Meridian to Laurel, Miss., on the N. O. & N. E. railroad was considered intrastate business; all freight from points outside of the State to points in Mississippi and from points in the State of Mississippi to points outside of the State of Mississippi, and from points outside of the State to points outside of the State that merely pass through Mississippi was treated as interstate business.

19 Q. In your records and book-keeping has your company any actual way of apportioning the operating cost or expense as between State and interstate traffic. If you have, state how the apportionment is arrived at and what was the result for the year 1902?

Harvey & Jones.—A. Neither in our records or book-keeping, nor in any other manner, has our company any accurate way of apportioning the cost or expense as between State and interstate traffic.

20 Q. Please state if you can the total amount of freight charges received for the year ending June 20, 1903, on grain and grain products shipped in carload lots from Vicksburg to Meridian, excluding from your calculation that received from other railroads and carried on through rate?

Harvey & Jones.—A. We have no record of any grain or grain products having been shipped from Vicksburg to Meridian, during the year ending June, 30, 1903, that was not received via the Alabama & Vicksburg railway or from other railroads, and carried either on a proportion of the through rate or on the rebilling
66 rate referred to.

21 Q. From this calculation can it be shown with reasonable certainty what the actual total loss to the company would have been for the year ending June 30, 1903, if this rate of 3½c. now in question on carload lots from Vicksburg to Meridian had been in operation? Please make this calculation not with reference purely to published tariffs but with reference to the actual traffic handled and the actual rates that were charged.

Harvey, Steele & Jones.—A. It is impossible to state what the actual loss to the company would have been for the year ending June 30, 1903, if this rate of 3½c. had been in operation, as it is impossible to estimate what amount of grain and grain products would have been brought to Vicksburg by river, the cost of handling which by the Alabama & Vicksburg Railway Company would have been

far greater than the cost of handling business received over its own line or from other railroads. The Meridian board of trade asked for a flat rate of 3½c. per hundred pounds in order to apply the same to grain and grain products to be brought to Vicksburg in barges, each holding from 25 to 50 carloads of grain. To handle this grain the ordinary supply of cars at Vicksburg would not be sufficient and it would have been necessary to incur an unusually heavy expense of hauling empty cars to that point to meet the requirements of these grain shipments, added to which would have been the additional great expense of handling said cars to and from the river front.

22 Q. In the affidavit of Mr. Harvey (page 4) he states that during the year ending June 30, 1903, the total freight on grain and grain products billed from Vicksburg to Meridian amounted to $3,657.86. Assuming that the amount of traffic will remain the same, will not the aggregate loss to your company be such
67 proportion of $3,657.86 as the rate of 3½c. bears to the rates you are now receiving?

Harvey, Steele, & Jones.—A. That the total freight on grain and grain products during the year ending June 30, 1903, billed from Vicksburg to Meridian, amounted to $3,657.86. If the rate had been reduced as suggested to 3½c. per hundred pounds there would have been a diminution of this revenue by $1495.00; but it is fair to assume that the amount of traffic would not have remained the same with the lower rate in force. It is claimed and probably with reason, that the fixing of this rate of 3½c. per hundred pounds on grain and grain products would have enabled grain to be shipped in barges to Vicksburg and thence over said railway in greatly increased quantities, and as it is shown that the rate of 3½c. per hundred pounds on grain and grain products from Vicksburg to Meridian would not pay the full cost of handling such shipments, the loss to the Alabama & Vicksburg railway would be increased as the volume of business increased.

23 Q. In the calculation of Mr. Harvey, in his affidavit (page 5) has he not made it on the assumption that the aggregate loss made by the enforcement of the order would be more than the proportionate amount stated in the preceeding questions?

Harvey & Jones.—A. The calculation of Mr. Harvey, in his affidavit (page 5) is based upon the assumption, which is true, that the revenue derived from hauling grain is trainloads from Vicksburg to Meridian at 3½c. per hundred pounds, would be less than the actual average cost per freight train. That calculation established an actual loss per train in handling such freight.

24 Q. State if you can from your books what the total receipts of freight on all carload shipments of all kinds from Vicksburg to Meridian originating in Vicksburg were for the year ending June 30, 1903? Then state what would be the aggregate loss by the road if the same proportionate reduction as is now proposed had been
68 made on all such shipments from Vicksburg to Meridian?

Harvey & Jones.—A. The books of said company do not

show the total receipts of freight on all carload shipments from Vicksburg to Meridian, originating in Vicksburg, but they do show that the shipments billed from Vicksburg to Meridian and for points beyond, for the year ending June 30, 1903, aggregated 39,319 tons, whereon the revenue was $46,508.00 to-wit: an average of $1.18 per ton. If the rate had been 3½c. per hundred pounds or 70c. per ton, the A. & V. revenue on said shipments would have been only $27,523.00 to-wit: a loss of revenue of $18,985.00.

25 Q. Is it not a fact that your company does not have to haul empty cars out from Meridian to Vicksburg? On the other hand, is it not a fact that you have difficulty in getting enough cars to handle your traffic out of Meridian? Can you give the number of empty cars which you had to carry out from Meridian to Vicksburg during the year ending June 30, 1903?

Harvey & Steele.—A. As a rule we do not have to haul empty cars from Meridian to Vicksburg for loading at that point east, but we haul a large number of empty foreign cars from Meridian through Vicksburg to points on the Vicksburg, Shreveport & Pacific railway, for return movement of lumber shipments. There cars being delivered to us by connections, principally the Mobile & Ohio and Alabama Great Southern roads, upon the express understanding that they will be used for return loads via their lines. We also haul empty from Meridian through Vicksburg refrigerator cars and tank cars that are loaded by connections west of Shreveport to points reached over the Vicksburg, Shreveport & Pacific and Alabama & Vicksburg roads, and which cars have to be properly returned. The total number of empty cars hauled from Meridian to Vicksburg during the fiscal year ending June 30, 1903, was 1948, said cars being principally those referred to as
69 coming from connections to be loaded back by the Vicksburg, Shreveport & Pacific road with through freights. These empties could not be used for the loading of grain and grain products from Vicksburg to Meridian, as other railroads will only supply empties upon the understanding that they are returned to them through loads for movement over their lines. Except during the months of January and February, there is not as a rule any shortage of cars for loading out of Meridian, but during the months of January and February there is a very large movement of fertilizer from Meridian, which has to be moved within a very short period, and during that time there is frequently a difficulty in supplying enough cars to handle said traffic promptly, as cotton traffic is then very heavy also.

26 Q. Is it not a fact that all the grain and grain products shipped from Vicksburg to Meridian originate elsewhere than in Vicksburg? In other words, do not practically all of such products first come in to Vicksburg by other roads, or by river?

Harvey & Steele.—A. No grain originates at Vicksburg. All grain and grain products shipped out of Vicksburg enters that city

either by the Alabama & Vicksburg railway or other roads. Little or no grain comes into Vicksburg by river.

27 Q. Is it not a fact also that the enforcement of this order is treated by both the board of trade and your company as aimed at only products which originate outside of Vicksburg and which come into Vicksburg by rail or by water? Is the board of trade interested or concerned in any other class of shipments?

A. It is a fact that the enforcement of the order is treated
70 by both the board of trade and the railway company as aimed at only products originating outside of Vicksburg and which might come into Vicksburg by rail or by water.

Replying to the inquiry whether or not the board of trade of Meridian is interested or concerned *on* any other kind of shipments, we have been informed, and have good reason to believe, and do believe, that the said board of trade in making this application has done so mainly, if not entirely, for the purpose of forcing the reduction of the interstate rates from St. Louis and other grain markets to Meridian by the securing of this low rate from the river at Vicksburg to Meridian, and that this is the principal interest and concern of said board of trade.

28 Q. Is it not a fact that prior to the passage of this order in November 1903, Vicksburg brokers, by the use of expense bill and rebilling privileges, could get their grain into Meridian cheaper than the Meridian merchants could get their grain into Meridian through Vicksburg and over the same routes? If this is not true as to all other roads connecting with your line, was it not true as to some of them? *It* is not true of the A. & S. & P.?

Harvey & Steele.—A. It is not a fact, nor is it true, that prior to the passage of this order of November, 1903, the Vicksburg brokers or merchants either by the use of expense bills and the rebilling privilege, or in any other way, could get their grain into Meridian cheaper than the Meridian merchants could get it through Vicksburg and over the same route. Meridian merchants were given the same rates and privileges in every respect that the Vicksburg merchants had, and availed themselves thereof. No shipment of grain and grain products originate in Vicksburg. Such ship-
ments originate principally in St. Louis and Kansas City.
71 By reason of the river competition at Vicksburg the rebilling rate from St. Louis to Vicksburg is 12c. per hundred pounds, add 3½c., the rebilling rate from Vicksburg to Meridian, and the cost of the haul via the Alabama & Vicksburg railway from St. Louis to Meridian under the rebilling rate is 15½c. per hundred pounds. The rate from Kansas City to Vicksburg is 17c. per hundred pounds, add the rebilling rate from Vicksburg to Meridian 3½c., and the cost via the Alabama & Vicksburg railway from Kansas City to Meridian is 20½c. The rebilling rate from St. Louis to Meridian via the Mobile & Ohio railroad is 14c. per hundred pounds or 1½c. lower than could be obtained by shipping to Vicksburg and using the 3½c. rebilling rate from there. The rate from

Kansas City to Meridian, either via the Mobile & Ohio or Vicksburg, Shreveport & Pacific roads is 20c. per hundred pounds, or ½c. less than could be obtained by shipping to Vicksburg and using 3½c. rebilling rate from there. Hence it is only under certain trade conditions that Meridian gets any of these shipments from Vicksburg, and that these conditions are exceptional is shown by the fact that only 3,089 tons of grain and grain products were billed from Vicksburg to Meridian during the year ending June 30, 1903, and of this 3,089 tons a large proportion consisted of oats from Texas consigned to Vicksburg and rebilled to Meridian and on which the 3½c. rebilling rate from Vicksburg to Meridian made the through rate from point of shipment in Texas, and by no adjustment of rates could Meridian expect a lower through rate on Texas grain than is made on this basis.

29 Q. Are you prepared to say to your own knowledge that the above has not been the case?

Harvey, Steele, & Jones.—A. Affiant, T. F. Steele, states of his own knowledge based upon instructions given by him and
72 the manner in which they are carried out, and C. C. Harvey and Larz A. Jones state from the records, that these rebilling and other privileges were granted in all respects to Meridian merchants the same as to Vicksburg merchants, and that the agents at Vicksburg and Meridian received their instructions to that effect. That the Meridian merchants availed themselves of this privilege is shown by their affidavits on record in this case.

30 Q. How long prior to 1902 was the rate of 3½c. charged from Vicksburg to Meridian? Is it not a fact that Mr. Steele, prior to July 1902, solicited shipments of flour over the A. & V. asking therefor a rate of only 3c. on flour coming from Texas?

Steele.—A. The rebilling rate of 3½c. per hundred pounds on grain and grain products from Vicksburg to Meridian was first issued March 12, 1900, but being found to be unremunerative it was withdrawn, and a rebilling rate of 5c. per hundred pounds was put in, effective December 12, 1901, and continued until July 23, 1902, when, in consequence of the menace and attitude of the railroad commission that they would order a straight rate of 3½c. per hundred pounds a rebilling rate of 3½ *rate* per hundred pounds was agreed upon with the commission, it being our understanding that this would settle the matter.

Mr. Steele did not solicit shipments of flour from Texas agreeing to accept 3c. per hundred pounds for the Alabama & Vicksburg proportion from Vicksburg to Meridian. In order to protect the interests of Meridian, he did make a rate on flour in carloads from certain Texas points of 2½c. per hundred pounds higher than the rate to Vicksburg, of which through rate, however, the Alabama & Vicksburg Railway Company received as its proportion from
73 Vicksburg to Meridian in no case less than 5–9/10c. per hundred pounds.

31 Q. What is the rate on flour which comes over your road from Vicksburg to Meridian when it now comes over the V. S. & P.?

Steele & Jones.—A. Flour coming over the Vicksburg, Shreveport & Pacific railway for Meridian usually goes at the through rate, but if billed to Vicksburg and reshipped, it is handled at the rebilling rate of 3½c. per hundred pounds. The proportion of the through rate varies according to the points from which it is shipped, but it is always in excess of 3½c. per hundred pounds for the haul from Vicksburg to Meridian.

32 Q. On through shipments of grain from the West coming over the V. S. & P. to Meridian via Vicksburg what rate does your road receive, and is this rate varied if the shipments are rebilled at Vicksburg to Meridian?

A. On through shipments of grain from the West coming over the Vicksburg & Shreveport & Pacific road to Meridian via Vicksburg a through rate from point of origin to Meridian is charged, and the Alabama & Vicksburg receives a division of said rate which allows it not less than 3½c. per hundred pounds. When shipments are sent to Vicksburg and re-shipped thence to Meridian, a rebilling rate of 3½c. per hundred pounds applies and is charged.

33 Q. In the expense per freight train from Vicksburg to Meridian 140 miles, viz: $304,64, has not the expense of the whole haul been charged to grain?

Harvey & Jones.—A. The average expense of hauling a full freight train from Vicksburg to Meridian, 140 miles, is $304.64 without regard to the contents of the train. If the entire contents of the train were grain the earnings would be $261.80. The expenses, however, as stated include nothing for fixed charges.

74 34 Q. State what the total tonnage of the road is and the total expense per mile per ton of carrying such freight?

Harvey & Jones.—A. The total tonnage hauled by the Alabama & Vicksburg railway during the year ending June 30, 1903, was 646,485 tons, and the total expense, not including fixed charges, per ton per mile for carrying such freight was $9\frac{1}{10}$ mills.

35 Q. If it be true that the A. & V. R. R. Co., has to haul empty cars to mills and points of shipments along its road to be loaded why can the company not haul grain in these cars rather than bring them back empty?

Harvey.—A. If empty cars have to be hauled to mills and points of shipment along the road of the Alabama & Vicksburg, to be loaded with lumber and other freight, they cannot at the same time be sent to Vicksburg to be there loaded with grain for Meridian.

36 Q. It is further said in Mr. Harvey's affidavit that the company could better afford to haul grain received by it from connecting lines at 3½c. per hundred than to haul empty cars for nothing. Does this rule apply only to the A. & V. at Vicksburg? Why does not this principal apply from both ends of the line? Has not your company received the same benefits and rights under the car service association as the connecting lines?

Harvey & Steele.—A. Foreign railroads would not furnish the Alabama & Vicksburg with empty cars to be used in grain service between Vicksburg and Meridian. Such foreign roads only furnish empty cars to be loaded with through shipments that are to move over their line.

37 Q. The said affidavit states that "under through loads the cars would not be delayed, whereas in the case of an empty car placed for loading the shipper would be allowed at least 48
75 hours in which to load the car." Would not this case be covered by the principle of expense bills?

Harvey & Steele.—A. Cars under through loads, even under the principle of rebilling, usually go through without delay; a few might be delayed. For the year ending June 30, 1903, only 50 cars of grain products at all were handled from Vicksburg to Meridian under the rebilling rate of 3½c. per hundred pounds; and these were handled indiscriminately for Meridian and Vicksburg dealers.

38 Q. What proportion of the 63% representing interstate traffic originates in Mississippi?

Harvey & Jones.—A. We have no record of the proportion of the 63% representing interstate traffic that originated in Mississippi.

39 Q. The affidavit of Mr. Harvey states that it is frequently necessary to offer inducements in the shape of accepting lower rates of traffic to get cars from connecting roads to load with return shipments. Has your company ever offered or given such inducements on any shipment from Vicksburg to Meridian, or from Meridian to Vicksburg, and if so, what is the lowest rate you have accepted as such an inducement? Please state fully as to this.

Harvey, Steele & Jones.—A. The inducement offered by the Alabama & Vicksburg Railway Company was the acceptance in the division of through rates of a very low proportion in order to enable its connecting lines to secure traffic *to* Vicksburg to Meridian, and to thus furnish the Alabama & Vicksburg with equipment for return through loads to said connecting lines. In no instance has the Alabama & Vicksburg Railway Company accepted less than 3½c. per hundred pounds for the haul between Vicksburg and Meridian on said through traffic.

76 40 Q. In the affidavit of Mr. Larz A. Jones, the company's auditor, he states that if the reduction proposed by the commission be applied to other earnings account, it would result in a reduction of revenue of $471,000.00. Please state if the board of trade, or the railroad company or any one else has ever sought to have it applied to other earnings accounts of the company?

Harvey, Steele & Jones.—A. Up to the present time, the board of trade has not sought to have the reduction herein proposed on grain and grain products applied to any other freight of the railway company.

41 —. Please now state what the net earnings for the year 1903 over and above operating expenses and fixed charges were in the aggregate, and how much less they would have been in the aggre-

gate if this order had been in force during that year and applied only to grain products in carload lots from Vicksburg to Meridian?

Harvey & Jones.—A. The net earnings for the fiscal year ending June 30, 1903, over and above operating expenses and fixed charges, were $161,313.33. It is impossible to state how much less they would have been in the aggregate if this order had been in force during that year, but there would have been an actual loss on all of the business handled and the total loss would have increased as the business increased.

42 Q. Did not the company at one time within the past few years issue an order that cars of the A. & V. should not be allowed to leave your road for other lines?

A. Inasmuch as the outbound movement of freight from the Alabama & Vicksburg railway far exceeds during the cotton season the inbound freight movement, orders have been issued at times — cars of the Alabama & Vicksburg railway should not be allowed to leave that line for other roads. The purpose of this order was to enable that road to retain its own equipment for local business, and
77 depend upon foreign cars for outbound business over foreign lines; as otherwise, with outbound shipments greatly in excess of inbound shipments, the road would have soon been depleted of the necessary equipment to handle its local trade. As a matter of fact, however, despite this order the Alabama & Vicksburg Railway Company has never been able to retain all of its cars on its own lines, nor to prevent many of them being sent to other lines with outbound freight, although the equipment of freight cars of the Alabama & Vicksburg railway is fully as great per mile as that of other roads in the neighboring territory.

43 Q. What is the usual difference in time required for a through freight train to go from Vicksburg to Meridian, and a local freight train?

Harvey & Steele.—A. What is commonly called a "through freight" runs from Meridian to Vicksburg in about 10 hours, whereas what is commonly called a "local freight" runs from Meridian to Vicksburg in about 15 hours, but through freight and local freight trains, however, in every instance carry both local and through freight.

44 Q. Which of your officers testified before the commission on the hearing of this matter?

Harvey & Steele.—A. Mr. Harvey, president and general manager, and Mr. Steele, general freight agent, testified before the commission on the hearing of this matter.

45 Q. On what personal knowledge has the allegations been made by your company in this suit that the commission was being made a tool of?

Harvey, Steele & Jones.—A. We are not aware that the allegation has been made by the Alabama & Vicksburg Railway Company in this suit that the commission was made a tool of.

78 46 Q. In the matter of the expense of moving freight trains is it not true that when a train of say as many as ten cars, is moving the addition of several more cars, say 4 or 5, will add little or nothing to the cost of moving the train? Is it not also true that you have frequently had to take empty cars from Vicksburg to Meridian in order to move freight from Meridian?

A. The increase in the expense of moving a freight train by the addition of a few extra cars is not proportionate to the number of cars in the train, but it is necessary to have a train loaded to the extent of the engine power to make it pay. In other words, a freight train of say 10 cars with ordinary freight would not be remunerative, and the Alabama & Vicksburg Railway Company does not haul such trains. It is true that when the tonnage is heavier westbound than eastbound, said company carries empty cars into Meridian to move the freight out.

47 Q. Has not your agent, Mr. Rivers, frequently had to wire Vicksburg for empty cars sent over to Meridian?

Harvey & Steele.—A. We have no personal knowledge of what Mr. Rivers did in this respect. The question, however, is misleading. The office of the superintendent of the Alabama & Vicksburg Railway Company is at Vicksburg, Mississippi, and it was the duty of Mr. Rivers, as well as that of every other agent of said railway, to advise with the superintendent's office at Vicksburg as — the equipment necessities at his station and the superintendents then furnishes the needed cars from the nearest available point.

THE STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared before me, the undersigned notary public, in and for said State and parish, the said C. C. Harvey, T. F.
79 Steele and Larz. A. Jones, who being duly sworn, deposes and says, the said C. C. Harvey that the foregoing answers to cross interrogatories numbered 2-4-5-7-10-11-12-13-14-15-16-19-20-21-22-23-24-25-26-27-28-29-33-34-35-36 - 37 - 38-39-40-41-42-43-44-45-46-47, are true, the said T. F. Steele that the foregoing answers to cross interrogatories numbered 1-2-3-4-5-6-7-8-9-10-21-22-25-26-27-28- 29 - 30- 32-36 - 37-39-40-42-43-44-45-46-47 are true, and the said Larz A. Jones that the foregoing answers to cross-interrogatories numbered 5-7-9-11-12-13-14-15-16-17-18-19-20-21-22-23-24-29-31-33-34-38-39-40-41-45 are true.

C. C. HARVEY.
T. F. STEELE.
LARZ. A. JONES.

Sworn to and subscribed before me severally by the said parties this 20th day of April, A. D. 1904.

PURNELL M. MILNER, Not. Pub. [SEAL.]

The cross interrogatories which the above witnesses failed to answer were not answered because of lack of personal knowledge.

T. A. McWILLIE.

On this explanation we waive objections for this.

M. McCLURG.
McINNIS, ALEXANDER & ALEXANDER.

Filed April 22 / 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

80 Affidavit of L. Green.

STATE OF GEORGIA, }
County of Fulton. }

Personally appeared before me, the undersigned notary public in and for said county and State, L. Green, who being by me first duly sworn, deposes and says that he is and has been for some years the assistant general freight agent of Southern Railway Company, and that his office is in the city of Atlanta and State of Georgia; that the nature of his business is such as to necessitate his becoming familiar with the subject of railroad freight charges, and that he is familiar with the subject from study and official experience; that the rate of 3½c. per 100 pounds on grain and grain products from Vicksburg to Meridian, Mississippi, which the Mississippi Railroad Commission has required to be put in force by the Alabama & Vicksburg Railroad Company, is unreasonable and unjust, and that the affiant knows of no such low rate on the same commodity for the same distance on any railroad in the United States, and that the commodity in question at a rate of 3½c. per 100 pounds for a distance of 142 miles would yield little, if any profit to the carrier, and under conditions affecting transportation in the State of Mississippi would, in his opinion, cause an actual loss to the carrier.

L. GREEN.

Sworn to and subscribed before me this 16th day of March, 1904.

FRANCIS P. MADEIRA,
Notary Public. [SEAL.]

Filed May 27/ 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

81 Affidavit of C. B. Compton.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared before me, the undersigned notary public, in and for said county and State C. B. Comptom, who being by me first

duly sworn, deposes and says that he is and has been for some years, the traffic manager of the Louisville & Nashville Railroad Company, having his office in the city of Louisville, and State of Kentucky; that the nature of his business is such as to necessitate his being familiar with the subject of railroad freight charges, and that he is familiar with that subject from study and official experience; that the rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian, Mississippi, which the Mississippi Railroad Commission has required to be put in force by the Alabama & Vicksburg Railway Company, is unreasonably and unjustly low in and of itself, and unreasonably and unjustly low as compared with rates on similar traffic in other parts of the United States; that the rate would not yield any profit to the railroad company for transportation from Vicksburg to Meridian, Miss., but on the contrary would cause an actual loss to the carrier.

C. B. COMPTON.

Sworn to and subscribed before me this 16th. day of March, 1904.

[SEAL.] J. PORTER PARKER,
Notary Public.

Filed May 27/1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

82 Affidavit of C. C. Cameron.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared before me, the undersigned notary public, in and for said county and State, C. C. Cameron, who being by me first duly sworn, deposes and says that he is and has been for some years, the general freight agent of the Illinois Central railroad, having his office in the city of Louisville, and State of Kentucky; that the nature of his business is such as to necessitate his becoming familiar with the subject of railroad freight charges, and that he is familiar with that subject from study and official experience; that the rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian, Mississippi, which the Mississippi Railroad Commission has required to be put in force by the Alabama & Vicksburg Railway Company, is unreasonably and unjustly low in and of itself, and unreasonably and unjustly low as compared with rates on similar traffic in other parts of the United States; that the rate would not yield any profit to the railroad company for transportation from Vicksburg to Meridian, Miss., but on the contrary would cause an actual loss to the carrier.

C. C. CAMERON.

Sworn to and subscribed before me this 16th. day of March, 1904.

[SEAL.] WILLIAM RENAUDIN,
Notary Public.

Filed May 27 / 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

83 Affidavit of Haiden Miller.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared before me, the undersigned notary public, in and for said county and State, Haiden Miller, who being by me duly sworn deposes and says that he is and has been for some years, the general freight agent of the Mobile & Ohio Railroad Company, having his office in the city of St. Louis, and State of Missouri; that the nature of his business is such as to necessitate his becoming familiar with the subject of railroad freight charges, and that he is familiar with that subject from study and official experience; that the rate of 3½ cents per hundred pounds on grain and grain products from Vicksburg to Meridian, Mississippi, which the Mississippi Railroad Commission has required to be put in force by the Alabama & Vicksburg Railway Company, is unreasonably and unjustly low in and of itself and unreasonably low as compared with rates on similar traffic in other parts of the United States; that the rate would not yield any profit to the railroad company for transportation from Vicksburg to Meridian, Miss., but on the contrary would cause an actual loss to the carrier.

HAIDEN MILLER.

Sworn to and subscribed before me this 16th. day of ——, 1904.

[SEAL.] WM. AMBROSE COLLINS,
Notary Public.

Filed May 27 / 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

84 Certificate of T. R. Maxwell, Sec't'y of Railroad Commission.

I, the undersigned Thomas R Maxwell, secretary of the railroad commission of the State of Mississippi, hereby certify that as such secretary, I am the legal custodian of the books and records of said commission; that I have made diligent search in my office for any

order of said commission fixing a freight rate on grain and grain products for any other railroad from one point on its line within the State of Mississippi to another point on its line therein of equal distance as low as that of 3½ cents per hundred pounds from Vicksburg to Meridian fixed for the Alabama & Vicksburg Railway Company by the order of said commission of November 16th, 1903, and that I have been unable to find any such order; and further, that after diligent search therefor in my said office, I have been unable to find any order of said commission, changing the freight rate on grain and grain products for any railroad from that set out as its rate in the biennial reports of said commission, except the said order of November 16, 1903.

Given under my hand and seal of said commission this 28th day of May, 1904.

T. R. MAXWELL, Sec'y. [SEAL.]

Filed by the commission
June 18th, 1904.
ROB'T B. MAYES, Chancellor.

85 Agreement by Counsel.

The undersigned solicitors for the complainant and defendant in the above cause hereby agree that the affidavits then and to be taken on behalf of the parties to the above cause may be read in evidence as the deposition of said parties on the final hearing of said cause as well as the motion to dissolve the injunction granted therein.

Witness the signature of said solicitors this — day of March, 1904.

McWILLIE & THOMPSON,
Solicitors for Complainant.
McCLURG & GARDNER,
Solicitors for Defendant.

Filed May 27/1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

86 Agreement of Counsel.

In Chancery Court, Hinds County, 1st District.

ALABAMA & VICKSBURG RY. CO.
*v.*
RAILROAD COMMISSION OF STATE OF MISSISSIPPI. } No. 2386.

In order to decrease the size of the record and avoid unnecessary expense, it is agreed that the clerk of the above court need not copy

into the transcript to be sent to the supreme court the cross-interrogatories propounded to witnesses except where they appear in connection with the answers of the witnesses, and that he need not copy into the record any part of the biennial reports of the defendant railroad commission except pages 345, 348, 349 of its ninth biennial report hereto attached, it being agreed that the intrastate rates on grain and grain products of the complainant as set out in the eighth biennial report of said commission, and the rates of the numerous other railroads operating in this State as set out in both of said reports are the same as those of complainant for the distances set out in the table shown on said pages 348 and 349 of defendant's ninth biennial report and clerk need not copy any of the books introduced by defendant, viz: Statistics of Railways in U. S.—1902 except pp. 316, 374–5, 455 & 508–9 and Ninth (9) Biennial Report Miss. R. R. Com. except pp. 47 & 55 and on above pages only the statistics as to the A. & V. Ry. Co.

ATT'Y GEN'L.
McCLURG, McINNIS, ALEXANDER &
ALEXANDER, For Def'ts.

Filed July 28, 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

87 Alabama & Vicksburg Railway.

Table of Distances Between Stations.

| Stations. | | Meridian. | Jackson. | Vicksburg. |
|---|---|---|---|---|
| Meridian | Miss. | ..... | 96 | 140 |
| *Lost Gap | Miss. | 6 | 90 | 134 |
| *Grahams | Miss. | 11 | 85 | 129 |
| *Smith & Allen | Miss. | 14 | 82 | 127 |
| *Point | Miss. | 15 | 81 | 125 |
| Chunky | Miss. | 17 | 79 | 123 |
| *Ragland | Miss. | 18 | 79 | 122 |
| Hickory | Miss. | 23 | 73 | 117 |
| *Skinners | Miss. | 29 | 67 | 111 |
| Newton | Miss. | 31 | 65 | 109 |
| Lawrence | Miss. | 35 | 61 | 105 |
| *Quattlebaum | Miss. | 37 | 59 | 103 |
| *Scoggins | Miss. | 38 | 58 | 102 |
| Lake | Miss. | 41 | 55 | 99 |
| *Muskegon | Miss. | 42 | 54 | 98 |
| *Lake Lumber and Imp. Co | Miss. | 42 | 54 | 98 |
| *Russells | Miss. | 45 | 51 | 96 |
| *Fairchilds | Miss. | 47 | 50 | 94 |
| Forest | Miss. | 49 | 47 | 91 |
| *Raworth | Miss. | 55 | 41 | 85 |
| *Gravel Pit | Miss. | 59 | 37 | 81 |
| Morton | Miss. | 60 | 36 | 80 |
| *Adams Lumber Co. | Miss. | 64 | 32 | 76 |
| *Clarksburg | Miss. | 65 | 31 | 75 |
| Pelahatchie | Miss. | 69 | 27 | 71 |
| *Rankin | Miss. | 76 | 20 | 64 |
| Brandon | Miss. | 81 | 15 | 59 |
| *Rice Hill | Miss. | 84 | 12 | 56 |
| *Greenfields | Miss. | 85 | 11 | 55 |
| *Howell | Miss. | 88 | 8 | 52 |
| Pearson | Miss. | 91 | 5 | 49 |
| Jackson | Miss. | 96 | ..... | 44 |
| *Dixon | Miss. | 101 | 6 | 40 |
| Clinton | Miss. | 105 | 9 | 35 |
| *Hinds | Miss. | 110 | 15 | 30 |
| Bolton | Miss. | 113 | 17 | 27 |
| *Champion Hill | Miss. | 117 | 21 | 23 |
| Edwards | Miss. | 122 | 26 | 18 |
| *Smiths | Miss. | 126 | 30 | 14 |
| Bovina | Miss. | 130 | 34 | 10 |
| *Newmans | Miss. | 132 | 36 | 8 |
| *Mulligan | Miss. | 133 | 38 | 7 |
| *Beechwood | Miss. | 136 | 41 | 5 |
| Vicksburg | Miss. | 140 | 44 | ..... |

*Prepay stations.

From 9th Biennial Report of Mississippi R. R. Commission.

Per hundred pounds.

| For distance of | Brick, minimum C. L., 40,000 lbs. (See note 4.) | | Corn, oats, corn meal, hominy, grits, hominy feed, bran, screenings, bran, feed, and mill stuff. | | Flour, in sacks. | | Flour, in barrels, per barrel. | | Hay, native grown, minimum C. L., 18,000 lbs. (See note 5.) Hay, N. O. S., same rate. | | Coal, coke, native grown, minimum C. L., 30,000 lbs. (See note 5.) | | Corn, native grown, C. L. (See note 5.) | | Bagging and cotton ties, art. or mixed, C. L., 24,000 lbs. minimum. | | Ice, L. C. L., packed. | | Fruits and vegetables, domestic. | | Heels, C. L. (See note 2.) | | Turpentine, in bbls. or in tank cars, C. L. (See notes 1 and 2.) | | Wool. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | C. L. | L. C. L. | In bags. | In bales. |
| 5 miles or less | 2 | 3 | 5 | 8 | 8 | 16 | 16 | 32 | 4 | 6 | 4 | 5 | 4 | 5 | 10 | 16 | 6 | 17 | 10 | 22 | 15 | 24 | 5 | 6 | 6 | 6 | 18 | 18 |
| 10 miles and over 5 | 2½ | 3½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 19 | 19 |
| 15 miles and over 10 | 2½ | 3½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 19 | 19 |
| 20 miles and over 15 | 2½ | 3½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 20 | 20 |
| 25 miles and over 20 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 20 | 20 |
| 30 miles and over 25 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 35 miles and over 30 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 40 miles and over 35 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 45 miles and over 40 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 50 miles and over 45 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 55 miles and over 50 | 3 | 4 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 60 miles and over 55 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 65 miles and over 60 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 70 miles and over 65 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 75 miles and over 70 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 80 miles and over 75 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 85 miles and over 80 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 90 miles and over 85 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 95 miles and over 90 | 4 | 5 | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 100 miles and over 95 | 4½ | 5½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 110 miles and over 100 | 4½ | 5½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 120 miles and over 110 | 4½ | 5½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 130 miles and over 120 | 4½ | 5½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 140 miles and over 130 | 4½ | 5½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |
| 150 miles and over 140 | 5 | 7½ | 6 | 8 | 8 | 16 | 16 | 32 | 5 | 6 | 5 | 6 | 5 | 6 | 11 | 17 | 6½ | 17½ | 11 | 22½ | 15½ | 24½ | 5½ | 6½ | 6½ | 6½ | 21 | 21 |

† See special commodity rates, page —.

From 9th Biennial Report of Miss. R. R. Commission.

89 Defendants Introduced.

Affidavit of H. M. Threefoot.

Personally appeared before me, Louis E. Crook, a notary public in and for the city of Meridian and State of Mississippi, H. M. Threefoot, who, being duly sworn, deposes and says that he is the chairman of the transportation committee of the board of trade of Meridian, Mississippi, that he was chairman of said committee when the president of the Alabama & Vicksburg Railroad Company accepted the rebilling rate of 3½c. per cwt. on grain and grain products moving from Vicksburg, Miss., to Meridian, Miss., and that he was chairman of said committee when the Mississippi Railroad Commission entered an order that the said Alabama & Vicksburg Railroad Company made said rate of 3½ per cwt. a flat rate from Vicksburg to Meridian. Your affiant says that prior to July 20th, 1902, before the Alabama & Vicksburg Railroad Company was authorized by the Mississippi Railroad Company so to do, it charged a rebilling rate from Vicksburg to Meridian of 3½c. on shipments of grain and grain products delivered to it by its connection, the Vicksburg, Shreveport & Pacific railroad, and the said board of trade claimed this flat rate of 3½c. per cwt., because the said Alabama & Vicksburg Railroad Company, had made this special or rebilling rate only to one of its connections, the Vicksburg, Shreveport & Pacific Railroad Company, and charged its other connections, the Texas Pacific Railroad Company, the Yazoo & Mississippi Valley Railroad Company, and all barges and steam boats delivering shipments of grain and grain products to it destined for Meridian, 10c. per cwt. Your affiant says that it is true that no other rate as low as 3½c. per cwt. is fixed by said commission on any other commodity of the same class as grain and grain products between the same points or between other points of the same distance, but your affiant says that the said board of trade claimed this flat rate of 3½c. per cwt., because the said Alabama & Vicksburg Rail-
90 road Company had made this special or rebilling rate of 3½c. per cwt. prior to July 20th. 1902.

And your affiant says that this rebilling rate as now enforced is unreasonably discriminative against Meridian, because your affiant says it enables the merchants of Vicksburg to get into Meridian cheaper than the merchants of Meridian themselves can. And your affiant says that this results from the privilege of rebilling freight from Vicksburg to Meridian. Your affiant says that it is his knowledge and belief that the merchants of Vicksburg route their shipments of grain and grain products over the Vicksburg, Shreveport & Pacific railroad, with the privilege of rebilling these shipments into Meridian on the basis of the rebilling rate at 3½ per cwt., and he further understands that the shippers of Vicksburg can accumulate expense bills on shipments, grain and grain products coming over the Vicksburg, Shreveport & Pacific railroad, and make any

and all shipments on said expense bills on the basis of the said 3½c. rebilling rate on grain and grain products that may come into their hands over any road into Vicksburg, which cannot be done by a Meridian shipper.

Your affiant further shows that Honorable Monroe McClurg was its duly appointed attorney to represent it in the meeting held before the said Mississippi Railroad Commission, and that said representative there stated to the said commission that the reason the Meridian board of trade petitioned for the flat rate of 3½c. per cwt. was to force the Alabama & Vicksburg Railroad Company to equalize the rate between Meridian & Vicksburg by giving the rate they gave to their connection, the Vicksburg, Shreveport & Pacific Railroad Company, to all connections and all shippers; that they did not seek by any undue or unfair means to build up or foster the jobbing trade of Meridian. And your affiant further says that the said petition was not made for the purpose of forcing the Mobile & Ohio Railroad Company to lower its interstate rates from St. Louis, Missouri, to Meridian; and your affiant stated, when charged by the officials of the Mobile & Ohio Railroad Company that
91 this was the purpose of the said petition, that he would guarantee that the shippers of Meridian would ship every pound of their freight they possibly could over the said Alabama & Vicksburg Railroad Company, for the next six months if the said Mobile & Ohio officials would cease their opposition to said flat rate of 3½c. per cwt. being put into effect, that the Meridian shippers could afford to do so as a consequence of said flat rate being put into effect. This proposition was not accepted by the said officials, who seemed to be making the greater part of the fight against said rate. Your affiant says that said flat rate was claimed by the Meridian board of trade as a matter of justice and equity and nothing more. Your affiant further says that the petition of the said board of trade, asked only for a flat rate of 3½c. per cwt. on shipments moving in carload lots; that it made, neither expressly nor by implication, a petition that this flat rate of 3½c. per cwt. should apply to shipments moving in less than carload lots. That said board of trade petitioned for a carload rate, and this petition the said commission granted. Your affiant further says that the Meridian shippers experience great difficulty in obtaining enough empty cars from all the railroads in which to move their shipments; that there is among all the railroads at Meridian a scarcity of empty cars.

H. M. THREEFOOT,
Chairman Transportation Committee,
Meridian Board of Trade.

Sworn to and subscribed before me this 10th. day of March, 1904.

L. E. CROOK,
Notary Public. [SEAL.]

Filed May 27/1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

92 Answers to Interrogatories Propounded to H. M. Threefoot.

1. Did the rebilling rate of 3½c. per 100 pounds which the A. & V. Ry. was carrying prior to July 23rd, 1902, added to the Vicksburg rate from St. Louis and other grain producing points, make any lower through rate than was being protected on shipments billed straight to Meridian from the same points. In other words, were not Meridian merchants able to secure as low through rate on shipments of grain billed straight to Meridian as the Vicksburg merchants could secure by billing to Vicksburg and using the 3½c. rate from that point to Meridian?

A. We were forced, some time prior to July 23rd, 1902, to buy considerable grain from Vicksburg merchants, shipped through Vicksburg, because we were able to deliver it in Meridian through them at a much less price than we could deliver direct from western points at tariff rates. We were forced to buy from Vicksburg. We don't know at what rate they got into Vicksburg, but we know they delivered grain through Vicksburg to Meridian cheaper than it could be brought by Meridian merchants from the West.

2. Is it not a fact that the rates which were being charged to Meridian straight from grain producing points were less than the tariff rates to Vicksburg added to the 3½c. rebilling rate?

A. We don't know what rates the Vicksburg merchants paid on grain and grain products moving into Vicksburg, or whether they paid tariff rates, but at times we bought cheaper from them than we could from merchants in the West.

3. Were you not aware that this rebilling rate was in existence prior to July 23rd, 1902, and did you ever make application to any representative of the A. & V. for that rate?

A. Yes, I was aware that the rebilling rate was in existence prior to July 20th, 1902, but it was a rate not at all well known and wasn't quoted in the tariffs. I made no application for it that I remember.

93 4. Did you ever receive any shipments on which this rebilling rate was used?

A. I don't remember.

5. Have the dealers at Vicksburg sold any grain or grain products on which the rebilling rate of 3½c. per 100 pounds was used to any others than the dealers and merchants at Meridian?

A. Yes, they have. The Vicksburg merchants used the 3½c. rebilling rate into Meridian and reship from this point to points beyond Meridian.

6. Did you not buy from Vicksburg dealers only in emergency cases? Was not the rate of 3½c. used, and did you not receive the benefits of the 3½c. rate in the delivered price?

On shipments from R. P. Moore & Co. and Helgason-England Co., which were consigned to you at Vicksburg and reconsigned at the 3½c. rate, were they reforwarded at yours or shippers' request? If at

shippers' request, were they advised of the 3½c. rate by you, and if not how could they use the 3½c. rebilling rate, which you say only Vicksburg dealers receive?

A. We not only bought of Vicksburg dealers in emergency cases, but at times when we could buy cheaper than we could from western points. We know nothing of R. P. Moore & Co. and Helgason-England Co., using the 3½c. rebilling rate from Vicksburg to Meridian.

All our shipments from R. P. Moore & Co. and Helgason-England Co. were bought delivered and freight prepaid. If the shipments were made to Vicksburg and rebilled from that point to Meridian on the 3½c. rate, we know nothing of it. We were practically sure that they were informed of the existence of the 3½c. rate by their broker at Vicksburg.

7. Did you at any time prior to July 23rd, 1902, consign any shipments through Vicksburg via the A. & V. Ry. which were reconsigned from there at the rebilling rate of 3½c. per 100 lbs.?

A. I don't remember.

8. Was it not generally known in Meridian that the 3½c. rebilling rate was in effect and could be used by Meridian dealers?

94 A. I don't think it was.

9. Did you or other Meridian dealers make use of this rate?

A. I don't remember.

10. When application was made to the Mississippi Railroad Commission by the Vicksburg merchants which resulted in the reissuance of the rate of 3½c. per 100 lbs., did not some certain of the Meridian merchants and members of the Meridian board of trade oppose the putting of the rate either as a flat or as a rebilling rate?

A. The merchants of Meridian were divided on the subject, yet several went over to Jackson to aid in the defeat of the flat rate of 3½c. as asked for by the Vicksburg merchants through the commission, because they labored under the impression at the time that if the flat rate was put in it would enable Vicksburg to get into Meridian's territory cheaper than Meridian herself could. Since the rebilling rate has been put in, Meridian merchants are now unanimous in the belief that it is for the best interests of the town that the flat rate be put in.

11. Was it not practically all moving by rail on through billing from St. Louis and other grain distributing points?

A. The question is too indefinite for an intelligent answer. It fails to ask what was moving, when it was moving and whither it was moving.

12. Were not repeated demands made by the Meridian board of trade on the M. & O. R. R. for a reduction of through rates on grain and grain products to Meridian between December 12, 1901, and Novemner —, 1903, during which period the rebilling rates of 5c. and 3½c. per 100 lbs. from Vicksburg to Meridian were in effect?

A. I will say that after the M. & O. withdrew the rates, which they had put in accordance with an agreement with the representatives of the Meridian merchants entered into in New Orleans, we did insist at various times on their reinstating the rates in accordance with the agreement which they absolutely refused to do.

95 13. Did you not admit in conversation with Mr. Steele, that in your opinion a flat rate of 3½c. per 100 lbs. was unremunerative, but that you were of the opinion it would not be necessary to carry it for any length of time?

A. I don't remember any such conversation.

14. Did you not ask Mr. Steele, at the time the Meridian board of trade was agitating the question of a reduction in rates, if in his opinion the establishment of a flat rate from Vicksburg to Meridian would not force the M. & O. to reduce through interstate rates?

A. I do not remember any such conversation, nor do I believe it ever took place.

15. Please explain what is meant by the A. & V. Rwy. charging the T. & P. and other connections mentioned a rate of 10c. per 100 lbs., the T. & P. having no connection with the A. & V. Rwy.?

A. I was in error as to the T. & P. connecting with the A. & V. but the ten cent rate prevails as to the Y. & M. V. and the barge and steamboat lines.

16. Please say if the use of expense bills in rebilling grain from Vicksburg has even been denied you?

A. No. We have never had any Vicksburg expense bills.

17. To what local stations on the A. & V. and N. O. & N. E. and the G. & S. I. roads do you sell shipments of grain in carload lots?

A. At one time we could sell, and were selling, at various points on the N. O. & N. E., the A. & V. and to some on the G. & S. I., but at the present time we are unable to reach any of them.

18. Do you re-ship from Meridian, or consign straight from St. Louis and other grain producing points, and can you not secure the same through rates to these local stations as can be obtained by the Vicksburg producing points?

A. We ship flour direct from the producing point to the local stations. As to whether we secure as low rates as the Vicksburg merchants from the producing point to these local stations, I am unable to say.

96 19. Is not practically all the grain and grain products in carload lots to stations on the roads named shipped direct from grain producing points?

A. No.

20. You state that your petition to the railroad commission for a flat rate of 3½c. per 100 lbs. was not made for the purpose of forcing the M. & O. to lower its interstate rates to Meridian. Was not application made to the M. & O. R. R. for a reduction in these interstate rates prior to the petition in question?

A. Yes, the application was made to M. & O. R. R. for a lower rate.

21. Was not the application to the commission for a 3½c. flat rate from Vicksburg to Meridian made after several conferences with the M. & O. R. R. and its refusal to reduce the rates from St. Louis to Meridian.

A. Yes, we tried to get a reduction in through rates into Meridian from all the lines entering Meridian.

22. At a conference in New Orleans between representatives of the Meridian board of trade and officials of the initial lines at Meridian on March 14th, 1901, at which conference a rate on grain from St. Louis to Meridian of 2c. per 100 lbs. higher than to Vicksburg was arranged, and this rate was withdrawn on December 1st. 1901, and a rate from St. Louis to Meridian of 2c. higher than to Vicksburg was put in effect.

Did you not state, and was it not stated by other members of the board of trade that had the adjustment at 1c. higher than to Vicksburg, made in New Orleans on the date named, been continued in effect, application for a flat rate of 3½c. per 100 lbs. from Vicksburg to Meridian would not have been necessary and would not have been made?

A. I will state that the representatives of the Meridian merchants had a conference in New Orleans with the officials of the initial lines entering Meridian March 1901, at which a satisfactory adjustment of rates was made.

Had this agreement been kept by the railroad companies
97 entering into it, the Meridian merchants would not have asked for a lower through rate, but they would have asked for a flat rate of 3½c. from Vicksburg into Meridian on grain and grain products after the rebilling rate of 3½c. was put in for the benefit of the Vicksburg merchants.

23. In your affidavit you state that shippers at Meridian experience great difficulty in obtaining enough cars from all the railroads to move their shipments. Do you not know that the same condition exist- at all other points?

A. I do not know that the same condition of shortage exists at all shipping points, but I am aware of the fact that it does to some extent.

24. Have you not repeatedly had complaints or advices from shippers from whom you buy grain at producing points that prompt shipments could not be made by reason of the inability of the railroads to furnish cars?

A. From some shippers, yes.

25. As chairman of the board of trade and as a merchant of Meridian have you not compared the rates from various producing points to Meridian with those to competing points in the States of Mississippi and Alabama, and does not Meridian have lower rates than any points coming at all in competition, except those located on the Mississippi river or the Gulf, the Jackson rate being the same as that to Meridian?

A. I have never compared the rates, I do not know.

26. Are not the rates from various grain producing points to Meridian lower than to Columbus, Aberdeen, Tupelo, Winona, Hattiesburg, Laurel, Miss., Montgomery, Selma and Birmingham, Ala.?

A. I do not know.

27. Are not all these places except Laurel and Hattiesburg, practically the same or a less distance?

98 A. I do not know. It depends on what part of the West the grain comes from.

28. Does Vicksburg originate any grain?

A. No.

29. From what points do you buy grain and grain products?

A. From no points specially. Illinois, Missouri and Kansas furnish most of the grain we use.

30. Did you not state to representatives of the A. & V. Rwy. that if the A. & V. Ry. would put in this flat rate of 3½c. per 100 lbs. on grain and grain products, you and other Meridian grain merchants would put on a barge line to operate to Vicksburg, in connection with said flat rate of 3½c. per 100 lbs.?

A. I don't remember to have said so; but if necessary we would do it.

31. What is the lowest all rail rate on grain to Vicksburg?

A. I don't know; would like very much to find out.

32. What proportion of your total grain and grain products did you buy from Vicksburg dealers during the twelve months ending December 31st, 1903?

What proportion during the same period did you consign to Vicksburg and reship at the 3½c. rebilling rate?

A. To both questions, I don't know.

H. M. THREEFOOT.

STATE OF MISSISSIPPI, }
City of Meridian. }

Personally appeared before me, Louis E. Crook, a notary public in and for the city of Meridian and State of Mississippi, H. M. Threefoot who subscribed to the answers to the above interrogatories, and being duly sworn, deposes and says that the said answers are true.

L. E. CROOK, [SEAL.]
Notary Public.

Filed May 27 / 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

99 Affidavit of A. H. McInnis.

Personally appeared before me, Louis E. Crook, a notary public in and for the city of Meridian in the county of Lauderdale and State of Mississippi, A. H. McInnis, who, being duly sworn deposes and says that he is a member of the transportation committee of the

board of trade of Meridian, Miss., and he is a shipper of large quantities of grain both to and from Meridian.

Your affiant further says that it is his knowledge and belief that prior to July 20th, 1902, and for a long time prior thereto, the Alabama & Vicksburg Railroad Company charged a rate of 3½c. on grain and grain products, said grain and grain products being delivered to the said Alabama & Vicksburg Railroad Company by its connection the Vicksburg, Shreveport & Pacific Railroad Company, destined for Meridian and rebilled from Vicksburg to Meridian at said rate of 3½c. per cwt. Your affiant further says that in October 1903, he was the broker of the Stark Grain Company, of Plano, Texas. That on behalf of said grain company he sold to the Floyd Mercantile Company of Shubuta, Miss., a carload of oats. Said oats were shipped over the Vicksburg, Shreveport & Pacific railroad into Vicksburg, and were there to be rebilled to Meridian. That on account of said rebilling said grain company was unable to prepay the freight through from Plano, Texas, to Shubuta, Miss., and when said oats arrived in Vicksburg they remained there thirty-five to forty days on account of said grain company having no agent at Vicksburg to rebill said oats, and demurrage charges accrued on same. And it is your affiant's belief that said grain company was compelled to appoint an agent in Vicksburg to have said oats rebilled.

Your affiant says that he had had offers on shipments of oats from Texas to Meridian, and that offers were based on a three cent rate per cwt. from Vicksburg to Meridian, said oats to move into Vicksburg over the Vicksburg, Shreveport & Pacific railroad. Your affiant further says that he purchased at one time a large consignment
100 of grain in Tennessee along the line of the Mobile & Ohio Railroad Company. That he routed said consignment via the Mobile & Ohio Railroad Company, the Alabama & Vicksburg railway at Meridian, said consignment to be rebilled from Vicksburg to Meridian. That by this arrangement your affiant shipped said consignment into Meridian one cent per cwt., cheaper than if he had routed said shipment from Tennessee direct to Meridian over the Mobile & Ohio railroad alone. You- affiant further says that when said consignment arrived in Meridian on its way to Vicksburg, he paid to the Alabama & Vicksburg Railroad Comapny its proportion of the through rates from Tennessee to Vicksburg, and the rebilling rate from Vicksburg to Meridian—in all seven cents per cwt., and thereby obtained from the Alabama & Vicksburg railroad the privilege of holding said consignment in Meridian.

A. H. McINNIS.

Sworn to and subscribed before me this 10 day of March, A. D. 1904.

[SEAL.] L. E. CROOK,
Notary Public.

Filed May 27/1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

101 Answers to Cross-interrogatories Propounded to A. H. McInnis.

1 —. In your affidavit, you state that the A. & V. Ry. charged a rate of 3½c. per 100 lbs. on grain and grain products delivered it by the V. & S. & P. Ry. destined for Meridian and rebilled from Vicksburg to Meridian at said rate of 3½c. per 100 lbs. If destined to Meridian, what was the necessity of rebilling from Vicksburg? Do you not mean that shipments were consigned to Vicksburg and rebilled from there at the rebilling rate of 3½c. per 100 lbs.

A. What I meant was that the ultimate destination of the shipment was Meridian. The shipment was consigned to Vicksburg and rebilled from there to Meridian at 3½c. per cwt.

2 Q. If your statement is as intended that shipments were destined to Meridian, can you give reference to date?

A. About the nineteenth of October, 1903.

3 Q. In your affidavit is reference to shipments from the Stark Grain Co., of Plano, Texas, was not the fact that shippers had no agent at Vicksburg the cause of the demurrage which accrued?

A. Certainly, the shipper was unable to get as low a through rate from Plano, Tex., to Shubuta as by billing into Vicksburg and rebilling from Vicksburg at the rebilling rate of 3½c. per cwt. and combining this rate with the local rate from Meridian to Shubuta. The through rate from Vicksburg to Shubuta is 16½c. per cwt. the rebilling rate from Vicksburg to Meridian is 3½c. per cwt.; the local rate from Meridian to Shubuta is 8c. per cwt. by combining the two, the shipper obtained a rate of 11½c., thus saving 5c. per cwt.

4 Q. If some other shipper, who had no agent at Meridian, has consigned a car of oats to that point without first selling it as in the case referred to, would not the demurrage and trouble have ensued?

102 A. In the case referred to, the oats were sold long before they were ever shipped.

5 Q. Was the 3½c. rebilling rate charged on the shipment from Vicksburg to Meridian, and was it not the fault of the shipper in not promptly disposing of it?

A. The 3½c. rate was charged, but it was not the fault of the shipper in not promptly disposing of the oats that the trouble ensued. The oats were sold before they were ever shipped.

6 Q. Do you not mean that you had offers of shipments of oats from Texas based on rate of 3½c. per 100 lbs. from Vicksburg to Meridian, instead of 3c., as stated by you.

A. The offer was based on a rate of 3c.

7 Q. Were you not aware that the re-billing rate of 3½c. per 100 lbs. was in effect and would be applied on such shipments?

A. It was my idea that the rate was 3½c. but the offer was based upon a rate of 3c.

8 Q. Have you received any shipments consigned you on which the rebilling rate of 3½c. per 100 lbs. was used?

A. I have had shipments stopped here upon which I have paid the A. & V. proportion of the through rate from Meridian to Vicksburg and the rebilling rate from Vicksburg to Meridian. This is how I used the 3½c. rebilling rate. This shipment, however, never left Meridian.

9 Q. In buying grain from Texas, was it not upon basis of this rebilling rate of 3½c., and was not this rate charged?

A. I sold these oats as a broker, and the terms of the sale were based upon the rebilling rate of 3½c. per cwt.

10 Q. Has this rate been denied you at any time by representatives of the A. & V. Rwy. on shipments which you consigned to Vicksburg?

A. No; but it was necessary for me to consign the shipments to Vicksburg over the A. & V. or the V. S. & P. in order to get the benefit of the rate.

11 Q. Did you not have the same privilege as the Vicksburg dealers to use this rate?

103 A. Not in the way the rate is applied. The injustice in this rate is that the Vicksburg dealers are allowed to use expense-bills up to 90 days after their receipt. They can ship grain out of their warehouses to Meridian on these expense-bills at the 3½c. rate even when the grain shipped is received from the valley road or by barge down the river, provided they have unused expense-bills for grain received over the V. S. & P. or the A. & V. This grain received over the A. & V. and V. S. & P. could have been consumed locally. Thus the rate gives the Vicksburg dealer a tremendous advantage in that he can ship grain into Vicksburg over all the lines of railway and barge and ship to Meridian on the rebilling rate, while the Meridian dealer is confined to the A. & V. and the V. S. & P. The result has been that the shipments by Meridian merchants moving into Vicksburg and destined for Meridian must all be received over the A. & V. and the V. S. & P.

12 Q. Do you know that through an error in the adjustment of rates from local stations on the M. & O. R. R. at the time you purchased a large consignment of grain in Tennessee, that the rates to Vicksburg from those points, plus the rebilling rate of 3½c. made one cent per cwt. less than the rates as published by the M. & O. R. R. to Meridian, and is it not a fact that as soon as their attention was called to it a correction in through rates to Meridian was made which prevented further handling in this manner?

A. I do not know anything about this being a mistake. I know that the rates were advanced so that grain could be shipped to Meridian at less than the direct rate from Mobile and Ohio stations to Meridian, and this was the condition for some time. I didn't call their attention to it, and knew nothing about it. The rate was, however, subsequently changed.

13 Q. You state that you consigned this grain to Vicksburg and rebilled it from Vicksburg to Meridian. Will you please advise

fully how this shipment was handled, and if it was not made
104 as convenient to you by the A. & V. Rwy. to handle this way as it would have been to a Vicksburg shipper?

A. I stated in my affidavit that I routed the consignment via the M. & O. and the A. & V. at Meridian, the consignment to be rebilled from Vicksburg to Meridian. By this arrangement I shipped the consignment into Meridian one cent per cwt. cheaper than if I had routed the consignment from Tennessee direct to Meridian over the M. & O. alone. I further said in my affidavit that when the consignment arrived in Meridian on its way to Vicksburg, I paid the A. & V. their proportion of the through-rate from Tennessee to Vicksburg and the rebilling rate from Vicksburg to Meridian,—in all 7c. per cwt.—and thereby obtained from the A. & V. the privilege of holding the consignment in Meridian. This is as clear as I can state the way this shipment was handled.

If the Vicksburg shipper had desired to sell this consignment in Meridian, the result would have been the same.

14 Q. Did not the privilege given you by the A. & V. Rwy. of holding the consignment in Meridian save an unnecessary haul and time which would have been consumed from Meridian to Vicksburg and return?

A. Yes; but it necessitated my paying 7 cents per cwt. for the mere privilege of having the consignment switched from the M. & O. to the A. & V. delivery tracks, the charge for which service is ordinarily one dollar per car.

15 Q. Would the 3½c. rebilling rate have given a Vicksburg dealer any advantage of you on this particular shipment.

A. No.

16 Q. Did you not have shipments made to you at Meridian after this consignment, and were they not billed direct to Meridian, the rate having been adjusted so that it was of no advantage to you to consign to Vicksburg and rebill?

A. The rates were afterwards so adjusted that it would have cost ½c. more per cwt. to have shipped to Vicksburg and rebill to Meridian than to ship direct from Tennessee to Meridian.

17 Q. Do you sell any carloads lots of grain at stations on the A. & V., N. O. & N. E. or G. & S. I. roads?

A. Yes.

105 18. Are such shipments consigned to Meridian and rebilled from there at the local rate, or are not practically all of them shipped direct from producing point to destination?

A. Practically all of them are shipped direct from producing point to point of destination.

19. On these shipments do you not receive the benefit of as low a rate as can be obtained by Vicksburg merchants? If not, please state the difference in each case.

A. I don't know whether I get as low a rate as the Vicksburg merchants or not. I do know that the tremendous advantage that a Vicksburg- has of me is that he is able to make quicker shipments

because he can accumulate his grain in his warehouse and ship from Vicksburg, while I have to make shipments from producing points in the West.

20. Are not the rates to Meridian from grain producing points lower than the rates from the same points to Columbus, Aberdeen, Tupelo, Winona, Hattiesburg, Laurel, Miss., Montgomery and Selma, Ala.?

Do any of those points sell grain and grain products in your territory?

A. To the first question, yes; to the second, no.

21. What is the lowest all-rail rate on grain to Vicksburg and to Meridian from St. Louis?

A. I don't know; I buy most of my grain from the West—in Missouri—and it comes via the V. S. & P. and the A. & V.

22. What proportion of your total grain and grain products did you buy from Vicksburg dealers during the twelve months ending December 31st, 1903?

What proportion during the same time did you consign to Vicksburg and reship at the 3½c. rebilling rate?

A. I didn't buy any grain from Vicksburg dealers during the period mentioned. As to the second question, I don't know.

106 23. Have you bought any grain or grain products from Vicksburg dealers except in emergency cases, and in each instance was not the 3½c. rate charged and did you not in this way receive the benefit of it in the delivered price?

A. I bought no grain or grain products from Vicksburg dealers at all.

ALBERT H. McINNIS.

STATE OF MISSISSIPPI,
Lauderdale County.

Personally appeared before the undersigned authority in and for said county and State, Albert H. McInnis who being duly sworn, deposes and says the answers to the above interrogatories are true.

ALBERT H. McINNIS.

Given under my hand and seal this the 10th day of May 1904.

[SEAL.] E. B. McRAVEN,
Notary Public.

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Affidavit of E. A. Slaughter.

Personally appeared before me a notary public in and for the State of Mississippi E. A. Slaughter, who being duly sworn, deposes and says that the rebilling rate of 3½c. from Vicksburg to Meridian

as now enforced by the Alabama & Vicksburg Railroad Company is unreasonably discriminative against Meridian, because your affiant says it enables the merchants of Vicksburg to get into the Meridian market with their grain and grain products cheaper than the merchants of Meridian themselves can. And your affiant says that this results from the privilege of rebilling freight from Vicksburg to Meridian. Your affiant says that it is his knowledge
107 and belief that the merchants of Vicksburg route their shipments of grain and grain products over the Vicksburg, Shreveport and Pacific railroad into Vicksburg, with the privilege of rebilling said shipment into Meridian, and they take out expense-bills covering the shipment to Vicksburg that when this shipment moves into Vicksburg, the merchants can sell the goods contained therein to their customers in Vicksburg and surrounding Vicksburg; that when they have a shipment of grain and grain products from Vicksburg to Meridian they use the same expense-bill they took out on the first shipment, and ship said second shipment into Meridian having rebilled the same at 3½c. per cwt., or 6½c. less than the Meridian shippers can make the same shipment.

E. A. SLAUGHTER.

Subscribed and sworn to before me this 10th day of March, 1904. by E. A. Slaughter Page # 1.

H. L. BARDWELL,
Notary Public, City of Meridian, Miss.

Filed May 27, 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Answers to Cross-interrogatories Propounded to E. A. Slaughter.

1. Has it not been known to you that a rebilling rate of 3½c. per 100 pounds from Vicksburg to Meridian could be used on shipments of grain, C. L., reaching that point by the A. & V. and the V. S. & P.?

A. Yes, by the A. & V. and the V. S. & P.

2. Could you not have consigned shipments to that point and obtained the same rate as any dealer in Vicksburg?

A. Yes at the 3½c. rate had we been able to furnish expense-bills; but we could not consign goods to Meridian on the 3½c. rebilling rate from Vicksburg had the goods come by barge or the Valley road into Vicksburg, as the Vicksburg dealers can.

3. Has the rebilling rate of 3½c. per 100 pounds been asked for by you and refused, or have you used the rebilling rate on any shipment consigned to you at Vicksburg?

108 A. The rebilling has never been asked for by me and refused, and I have used this rate.

4. Is it not a fact that you have made use of this rate on shipments consigned to you?

A. Yes.

5. Do you not understand that we require the surrender of expense-bills from Vicksburg dealers as well as from the Meridian dealers who consign shipments to themselves at Vicksburg when rebilled on the 3½c. rate?

A. Yes; but it is a fact that the Vicksburg dealers accumulate expense-bills and apply them on shipments that come into Vicksburg over the Valley road and down the river by barge, and deliver these last mentioned shipments into Meridian cheaper than the Meridian merchants can.

6. As you had the same privilege of using the 3½c. rate as the Vicksburg dealers and could therefore ship to Meridian at exactly the same through rate, how do you figure that there is a difference of 6½c. per 100 pounds?

A. Yes, we could consign the goods to Meridian on the basis of 3½c. per cwt., just as the Vicksburg dealer, provided the same reached Vicksburg over the V. S. & P.; but not if the shipment had reached Vicksburg over the Valley road or by barge, the charge in that case being 10c. per cwt. The Vicksburg dealers, by the use of their accumulated expense-bills, could deliver these barge shipments that had come over the Valley road into Meridian at 3½c. The difference between 10c. and 3½c. is 6½c.

7. In what way does the fact that the expense-bill on the first shipment is used on the second shipment affect the through rate?

A. The use of the expense-bill on the second shipment would not affect the through rate where the shipment had come into Vicksburg over the V. S. & P. from, say, Kansas City; but where the shipment *had come into Vicksburg over the V. S. & P. from, say, Kansas City; but where the shipment* reached Vicksburg by barge or by the Valley road, it will enable the Vicksburg shipper
109 to get into Meridian cheaper than the Meridian merchant.

8. How would it enable a Vicksburg shipper to deliver a car of grain in Meridian at anything less than the Meridian dealers could make on the same shipment, as you state?

A. As above shown.

9. Were the Meridian merchants or members of board of trade in favor of, or opposed to the flat rate of 3½c. per 100 pounds as applied by the Vicksburg prior to the establishment of the rebilling rate of 3½c. per 100 pounds July 23, 1902?

A. They were about equally divided, some in favor of, some against.

10. Are not the rates to Meridian from grain producing points lower than the rates from the same points to Columbus, Tupelo, Aberdeen, Winona, Hattiesburg, Laurel, Miss, and Montgomery and Selma, Ala.? Do any of these points sell grain and grain products in your territory?

A. To the first question, yes; to the second, no.

11. Have you not bought grain or grain products from Vicksburg dealers on basis of 3½c. rate?

A. Yes; but never except when I was compelled to.

12. If the rebilling rate of 3½c. enables the Vicksburg dealers to sell in Meridian, do not the buyers in Meridian secure the benefit of this rate in the delivered price?

A. No, they do not, from the simple fact that the middlemen, who are the Vicksburg dealers take the difference in the rate as their profit on the shipment.

13. Do Vicksburg dealers sell in Meridian to others than Meridian dealers or merchants?

A. I do not know.

14. Do you not buy only a small part of your grain and grain products from Vicksburg?

A. We never buy from Vicksburg dealers except when we run short and have to buy from them, as we consider it extremely bad policy to buy from competitors under any circumstances.

15. What proportion of your total grain and grain products did you buy from Vicksburg dealers during twelve months end-
110 ing December 31st, 1903.

What proportion during same period did you consign to Vicksburg and reship at 3½c. rebilling rate?

A. I don't know.

16. Why are they *are* able to sell a larger proportion if they have the advantage of lower rates than Meridian dealers can secure?

A. They are able to do so simply because they have lower rates and can make a lower delivered price.

For comparison, they can reach Hattiesburg and Laurel 3c. per cwt. less than Meridian can. They cannot sell in Meridian any cheaper than the Meridian merchants, but they can reach Meridian's territory 3c. per cwt. cheaper.

17. What is the lowest all — rate on grain from St. Louis to Vicksburg? To Meridian?

A. I do not know. No St. Louis proper business is handled here. It is all shipped into St. Louis and rebilled from there. I don't know what the rate is. They never ship on the tariff rates but on the rebilling rates.

E. A. SLAUGHTER.

STATE OF MISSISSIPPI, }
City of Meridian. }

Personally appeared before me, B. J. Carter, a notary public in and for said State and city, E. A. Slaughter, who being duly sworn, says that the answers given by him to the above interrogatories are true and correct.

B. J. CARTER,
Notary Public. [SEAL.]

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Affidavit of Tom Lyle.

Personally appeared before me E. B. McRaven a notary public in and for the city of Meridian and State of Mississippi, Tom Lyle, who, being duly sworn, deposes and says that he can ship flour
111 from any point on the Mobile & Ohio railroad into Vicksburg through Meridian and return to Meridian from Vicksburg at a rate of 41c. per cwt. Your affiant further says that out of this rate of 41c. per cwt., the Alabama & Vicksburg Railway Company receives 14c. per barrel, or 3½c. per cwt. into Vicksburg, and 3½c. back, said shipment being rebilled at Vicksburg to Meridian. Thus showing that the Alabama & Vicksburg Railway Company is not only willing to carry the flour from Vicksburg to Meridian on a basis of 3½c. per cwt., but is willing to carry flour from Meridian to Vicksburg on the same basis.

TOM LYLE.

E. B. McRAVEN,
[SEAL.] Notary Public.

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Answers to Cross-interrogatories Propounded to Tom Lyle.

1. Do you know of your own knowledge that the A. & V. Ry. receives 3½c. per 100 pounds from Meridian to Vicksburg on flour coming from stations on the Mobile & Ohio R. R.?

A. This was the rate quoted me by the agent of the A. & V. at Meridian.

2. Have you consigned any shipments to Vicksburg on which the A. & V. received 3½c. per 100 pounds from Meridian to Vicksburg?

A. No.

3. Have you had consigned to you, to your order, or to order of shippers any flour at Vicksburg and reconsigned it from that point at the rate of 3½c. per 100 pounds to Meridian?

A. No.

4. Have you ever reconsigned any shipment from Vicksburg to Meridian on which the rebilling rate of 3½c. was charged?

112 A. No.

5. Was the 3½c. rebilling rate ever denied you by the representative of the A. & V. while it was in effect?

A. No.

6. Did you ever buy any grain and grain products from Vicksburg dealers?

A. Yes, several times.

7. If they have the advantage in rates which it is claimed this

rate gives them, why can they not sell a great proportion of what the Meridian merchants require in their business?

A. They are competitors of ours, as we consider it very bad policy to buy from competitors under any circumstances. The reason the Vicksburg dealers have been unable to sell a greater proportion of their grain and grain products to the Meridian merchants is because they are unable to guarantee their grain to be in sound condition. This the merchants of the West will do. We pay anywhere from one to three cents for corn that is guaranteed sound and dry, or is kiln-dried. The Vicksburg merchants don't give us the guaranty and don't offer kiln-dried corn.

8. What is lowest all-rail rate on grain from St. Louis to Vicksburg? To Meridian?

A. I don't know. All the grain that comes into this territory from St. Louis originates beyond St. Louis, and moves from St. Louis on the St. Louis proportion of the through rate from producing point.

9. What proportion of your total grain products did you buy from Vicksburg dealers during twelve months ending December 31st, 1903? What proportion during same period did you consign to Vicksburg and reship at the 3½c. rebilling rate?

A. To both questions, I don't know. I have no means of finding out except by examining my records and that is impracticable on account of the time and labor such an examination would require.

TOM LYLE.

Personally appeared before me E. B. McRaven a notary public in and for the State of Mississippi, Tom Lyle, who being duly
113 sworn, says that the answers made by him to the above interrogatories are true.

Sworn to and subscribed before me this 9th day of May A. D. 1904.

[SEAL.] E. B. McRAVEN,
Notary Public.

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Affidavit of J. T. Russell, Jr.

Personally appeared before me H. L. Bardwell, a notary public in and for the city of Meridian and State of Mississippi, J. T. Russell, Jr., who, being duly sworn deposes and says that the rebilling rate from Vicksburg to Meridian as now enforced by the Alabama & Vicksburg Railway Company is unreasonably discriminative against Meridian, because it enables the merchants of Vicksburg to get into the Meridian market with their grain and grain products cheaper than the Meridian merchants themselves can. Your affiant says

that to his knowledge, the merchants of Vicksburg ship grain out of their warehouses in Vicksburg into Meridian over the Alabama & Vicksburg railway, applying this shipment to expense-bills covering some prior and different shipment into Vicksburg over the Vicksburg, Shreveport and Pacific railway, thus moving said shipments from Vicksburg to Meridian at the rebilling rate of 3½c. per cwt. In other words, the Vicksburg dealers are now shipping into Meridian grain from their warehouses in Vicksburg on the rate prescribed by the railroad commission.

J. T. RUSSELL, JR.

[L. S.] H. L. BARDWELL.
Notary Public.

3/31/1904.

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

114 Answers to Interrogatories Propounded to J. T. Russell, Jr.

1. You state in your affidavit that the rebilling rate is unreasonably discriminative against Meridian in favor of Vicksburg. Have you consigned shipments to Vicksburg and requested them rebilled from there? Was your request refused?

A. The rebilling rate has never been refused me on any shipment.

2. Have you consigned any shipments to Vicksburg and reconsigned them from there at a rate of 3½c. per 100 pounds?

A. I have never done so but the flour mills my firm represents have.

3. As rebilling rate of 3½c. per 100 pounds Vicksburg to Meridian is open to both Vicksburg and Meridian merchants, in what way is it discriminative against Meridian?

A. On account of the way Vicksburg merchants apply A. & V. and V. S. & P. expense-bills to shipments that have come into Vicksburg by barge or by the Valley road.

4. Do you know that an expense-bill for a shipment consigned to you would be accepted in the same manner as if offered by a Vicksburg dealer?

A. Yes, if I had a man in Vicksburg to do the re-consigning.

5. Is it not a fact that any Meridian merchant could have the same privileges as the Vicksburg merchant, so far as rates from that point are concerned?

A. Yes, if he had a man to do the reconsigning.

6. What is the lowest all-rail rate on grain from St. Louis to Vicksburg? To Meridian?

A. I do not know. The St. Louis shippers do not ship on tariff rates, but on rebilling rates. All the stuff coming here from St. Louis comes from beyond St. Louis.

7. What proportion of your total grain and grain products did you buy from Vicksburg dealers during twelve months ending December 31st, 1903?

A. Twenty five or thirty cars.

115 —. What proportion, during same period did you consign to Vicksburg and reship at 3½c. rebilling rate?

A. I do not know.

8. Have you brought any grain or grain products from Vicksburg dealers except in emergency cases, and in each instance was not the 3½c. rate charged, and did you not in this way receive the benefit of it in the delivered price?

A. I did not buy from there in emergency cases altogether. This rebilling rate frequently enabled them to give me as low a price as I could get from the West and the shipment was quicker.

9. Are not the rates to Meridian from grain producing points lower than the rates from the same points to Columbus, Aberdeen, Winona, Tupelo, Hattiesburg, Laurel, Miss., Montgomery and Selma, Ala.?

Do any of those points sell grain and grain products in your territory?

A. To the first question, I do not know. To the second, no.

J. T. RUSSELL, JR.

Personally appeared before me, B. J. Carter, a notary public in and for the State of Mississippi and city of Meridian, J. T. Russell, Jr., who being duly sworn says that the answers made by him to the above interrogatories are true and correct.

[SEAL.]

B. J. CARTER,
Notary Public.

Filed May 27, 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Affidavit of A. H. George.

Personally appeared before me H. L. Bardwell, a notary public in and for the city of Meridian and State of Mississippi, A. H. George, who, being duly sworn, deposes and says that to his knowledge the superintendent of the Alabama & Vicksburg Railway Company issued an order that none of the cars belonging to the Ala-

116 bama & Vicksburg Railway Company were to leave its line of road under any circumstances, and that this order applied not only to all roads at Meridian, but to the connection of the said Alabama & Vicksburg Railway Company, the New Orleans & North Eastern railroad. Your affiant further states that this order was in force during the business season of 1902–1903, and that during such season shipments routed over the line of the Alabama & Vicksburg

Railway Company, to be delivered to some other railroad at Meridian, was transferred from the cars of the said Alabama & Vicksburg railway into other cars. Your affiant further says that notwithstanding said order there was at Meridian a great scarcity of empty cars of said Alabama & Vicksburg Railway Company.

A. H. GEORGE.

[L. S.] H. L. BARDWELL,
Notary Public.

Filed May 27, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

117 Agreement of Counsel.

In Chancery Court, Hinds County, 1st District.

ALABAMA & VICKSBURG RAILWAY CO.
*vs.*
RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI. } No. 2386.

In order to decrease the size of the record and avoid unnecessary expense, it is agreed that the clerk of the above court need not copy into the transcript to be sent to the Supreme Court the cross-interrogatories propounded to witnesses except when they appear in connection with the answers of the witnesses, and that he need not copy into the record any part of the biennial reports of the defendant railroad commission except pages 345, 348, 349 of its ninth biennial report hereto attached, it being agreed that the intrastate rates on grain and grain products of the complainant as set out in the eight-biennial report of said commission, and numerous other railroads operating in this State as set out in both of said reports are the same as those of complainant for the distances set out in the table shown on said pages 348 & 349 of defendant's ninth biennial report and clerk need not copy any of the books introduced by def't viz: Statistics of Railways in U. S.—1902 except pp. 316, 374-5, 455 & 508-9 and Ninth (9) Biennial Report Miss. R. R. Com. except pp. 47 & 55 and on above pages only the statistics as to the A. & V. Ry. Co.

ATT'Y GEN'L.
McCLURG, McINNIS, ALEXANDER & ALEXANDER, For Def'ts.

Filed July 28, 1904.
W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

118 Alabama & Vicksburg Railroad Co.

| | |
|---|---|
| Total income, all sources | $1,014,481 80 |
| Total operating expenses | 735,525 37 |
| Income from operation | $278,956 43 |
| Other income | 12,452 33 |
| Total income | $291,488 76 |
| Less interest, $119,415; taxes, $24,674.24; miscellaneous, $1,061.00 | 145,150 24 |
| | $146,258 52 |
| Less 6% dividends on common stock | 63,000 00 |
| Surplus | $83,258 52 |

C. C. Harvey, president and general manager, New Orleans, La.
John T. Brent, secretary and treasurer, New Orleans, La.
Harry H. Hall, general counsel, New Orleans, La.
Larz A. Jones, auditor, New Orleans, La.
E. Ford, superintendent, Vicksburg, Miss.
T. F. Steele, general freight agent, New Orleans, La.
J. D. Grant, assistant general freight agent, New Orleans, La.
George H. Smith, general passenger agent, New Orleans, La.
Total mileage in Mississippi—141.300.

From 9th Biennial Report of Miss. R. R. Com.

119 Alabama & Vicksburg Railroad.

| | | |
|---|---|---|
| Total gross earnings in Mississippi | | $1,149,039 75 |
| Add dividends on stocks owned | | 3,140 00 |
| Add miscellaneous income | | 17,224 18 |
| Total income | | $1,169,603 93 |
| Less deductions: | | |
| Interest on funded debt | $119,415 00 | |
| Taxes paid | 28,500 00 | |
| Permanent improvements | 41,409 27 | |
| Operating expenses | 818,966 33 | |
| | | 1,008,290 60 |
| Net income | | $161,313 33 |

Percentage of expenses to earnings in Mississippi, 71.27%.

From 9th Biennial Report of Miss. R. R. Commission.

120 Amount of Railway Capital at the Close of the Year Ending June 30th, 1902.

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | No. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Stocks. | | | Funded debt. | | | | | | | Summary. | | |
| Ab-reviated name of road. | Amount outstanding. | Amount per mile of line. | Proportion to total railway capital. 100 x col. 2. Col. 12. | Amount outstanding. Cols. 8 x 9 x 10 x 11. | Amount per mile of line. | Proportion to total railway capital. 100 x col. 5. Col. 12. | Designation. Bonds. | Miscellaneous obligations. | Income bonds. | Equipment trust obligations. | Total railway capital. | Amount per mile of line. | |
| | *Dollars.* | *Dollars.* | *Per cent.* | *Dollars.* | *Dollars.* | *Per cent.* | *Dollars.* | *Dollars.* | *Dollars.* | *Dollars.* | *Dollars.* | *Dollars.* | |
| Ala. & Vick'b'g Ry | 1,050,000 | 7,354 | 32.41 | 2,190,100 | 15,339 | 67.59 | 2,190,100 | ..... | ..... | ..... | 3,240,100 | 22,693 | 1121 |

From pages 316-7 Statistics Railways in U. S.

121 Earnings and Income for the Year Ending June 30th, 1902.

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. | 16. | 17. | 18. | No. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Earnings arising from passenger service. | | | | | | | Earnings arising from freight service. | | | | | Other earnings. | | Summary of earnings. | | | |
| Ab-reviated name of road. | Passenger revenue. | Revenue per passenger per mile. | Mail. | Express. | Total passenger earnings, including miscellaneous. | Passenger earnings per train mile. | Proportion to total earning. 100 x col. 6. Col. 16. | Freight revenue. | Revenue per ton per mile. | Total freight earnings, including stock-yards, elevators, and miscellaneous. | Freight earnings per train mile. | Proportion to total earnings. 100 x col. 11. Col. 16. | Balance of car mileage, switching charges, and use of equipment. | Telegraph rents and other sources. | Total earnings from operations. Cols. 6 x 11 x 14 x 15. | Total earnings per train mile. | Proportion to total earnings and income. 100 x C. 16. C. 25. | |
| 21 | *Dollars.* | *Cents.* | *Dollars.* | *Dollars.* | *Dollars.* | *Dollars.* | *Per cent.* | *Dollars.* | *Cents.* | *Dollars.* | *Dollars.* | *Per cent.* | *Dollars.* | *Dollars.* | *Dollars.* | *Dollars* | *Per cent.* | |
| Ala. & Vicksb'g Ry. | 284,667 | 2.632 | 25,425 | 21,916 | 338,841 | 155,188 | 33.40 | 639,885 | 1.138 | 639,885 | 256,194 | 63.08 | 16,659 | 19,117 | 1,014,482 | 2,167 | 98.79 | 1121 |

122 *General Expenditures for the Year Ending June 30th, 1902.*

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
|---|---|---|---|---|---|---|---|
| Ab-revi-ted name of road. | Total operating expences. | | | Distribution of operating expences. (Three figures omitted.) | | | |
| | Amount. Cols. 5 x 6 x 7 x 8. | Per train mile. | Proportion to earning from operation. | Maintenance of way & structures. | Maintenance of equipment. | Conducting transportation. | General expences. |
| Ala. & Vicksb'g Ry..... | *Dollars.* 735,535 | *Dollars.* 1.57127 | *Per cent.* 72.50 | *Dollars.* 260 | *Dollars.* 129 | *Dollars.* 314 | *Dollars.* 31 |

From page 455 of Statistics of R. R's in U. S.

123 *General Expenditures for the Year Ending June 30th, 1902.*

| 9. | 10. | 11. | 12. | 13. | 14. | 15. | 16. | 17. | 18. | 19. | 20. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Expenditures assignable to fixed charges. | | | | | | | | Summary of expenses. | | | |
| Ab-reviated name of road. | Amount. Cols. 11 x 12 x 13 x 14 x 15 x 16 x 17. | Salaries and maintenance of organization. | Interest on funded debt. | Interest on interest-bearing current liabilities. | Rents paid for lease of road. | Taxes. | Permanent improvements charged to income account. | Other deductions. | Total operating expenses and fixed charges. Cols. 2 x 10. | Proportion assignable to operation. 100 x col. 2. Col. 18. | Proportion assignable to fixed charges. 100 x col. 10. Col. 18. | No. |
| Ala. & Vicksb'g. | *Dollars.* 145,150 | *Dollars.* ..... | *Dollars.* 119,415 | *Dollars.* ..... | *Dollars.* ..... | *Dollars.* 24,674 | *Dollars.* 1.061 | *Dollars.* ..... | *Dollars.* 880,675 | *Per cent.* 83.52 | *Per cent.* 16.48 | 1121 |

From pages 508–'9, Statistics Rys. in U. S.

124 Agreement.

A. & V. R. R. Co.
*vs.*
Miss. R. R. Commission.

It is agreed by the parties in the above styled cause, through their respective counsel, that on the motion of the Miss. R. R. Commission to dissolve the temporary injunction granted in this cause, the complainants may take affidavits of its witnesses with- the next ten days after the signing hereof and deliver the same to the counsel for the defendant, including counsel employed by the Meridian board of trade to assist the att'y gen'l in this matter, and that within the next ten days counsel for defendant and of the Meridian board of trade, aforesaid, may prepare cross interrogatories to any of complainant's witnesses which shall be answered under oath within five days after the delivery to complainant's counsel and may also present to complainant's counsel affidavits taken on the part of the defendant and said board of trade, which affidavits are to be presented to complainant's counsel with the cross-interrogatories, aforesaid, and complainant's counsel allowed five days in which to prepare cross-
125 interrogatories for defendant's said witnesses which shall be answered under oath within five days thereafter, and the said motion to dissolve said injunction shall then stand ready for trial at any time and place that the parties, through their counsel, may agree to, not exceeding ten days after all affidavits are in, as aforesaid. Notice and all formalities with reference to taking said affidavits and cross-interrogatories and of the time and place of the hearing of said motion to dissolve and the filing of copies of the answer are hereby mutually waived.

In the event of failure to agree as to the time and place the Mississippi R. R. Commission may present said motion and affidavits to the chancellor at any time and place convenient to it after the expiration of the time hereinbefore mentioned.

Witness our signatures this the 27th day of February, 1904.

WM. WILLIAMS, Att'y Gen.
McWILLIE & THOMPSON,
Att'ys for Compl't.
MONROE McCLURG,
Of Counsel with Att'y Gen'l.

Filed March 4, 1904.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Decree.

ALABAMA & VICKSBURG RAILWAY CO.
*vs.*
MISSISSIPPI RAILROAD COMMISSION.

This cause, having been, by consent, set down and submitted for final hearing and decree in vacation on the bill, exhibits and answer and proofs, and the court, having heard the same, finds that the complainant is not entitled to relief.

It is therefore ordered and decreed that the temporary injunction herein be dissolved and the bill dismissed at cost of complainant for which let execution issue. On complainant's application it
126 is granted an appeal with supersedeas upon the execution of a bond for appeal in the sum of $1000 within thirty days from this date.

Ordered and decreed July 11, 1904.

ROB'T B. MAYES,
Chancellor.

Filed and entered July 12, 1904. M. B. 7 / 79.

W. W. DOWNING, Clerk,
By S. LIVINGSTON, D. C.

Opinion of Chancellor.

In the Matter of the A. & V. Rate Case Against the Mississippi Railroad Commission.

To Messrs. Monroe McClurg, Alexander & Alexander, and McWillie & Thompson, att'ys, Jackson, Mississippi.

GENTLEMEN: In deciding the above styled cause I desire to say that I have had more difficulty in reaching a satisfactory conclusion in this case than any that I have been called on to decide during the short while that I have been chancellor. I do not think the authorities decisive of the question presented to me, are at all clear, but I have examined them all, and after the most careful examination I reach the conclusions set out below. I shall not attempt any lengthy review of the facts or the law in presenting to you my conclusions.

First. I do not think that the establishment of a rate from Vicksburg to Meridian, lower than the intermediate rates, is a discrimination between the intermediate points. Meridian is shown by the testimony taken in behalf of the railroad company, to be a competitive point, and the right to establish a lower rate at a competitive point than at intermediate points, is recognized by the Inter-State

Railway Commission, and seems to be well settled in the law. The usual way of regulating rates is according to the distance of the haul, but there is allowed an exception in case of a competitive point.

127 Second. I do not think that the constitutionality of the statute is drawn into question by this case. To warrant a decision on this subject it should be shown that the railway commission had used as a basis for the fixing of the rate the inter-state and intra-state earnings, and from the two as a basis had attempted to establish a rate. The commission allege in their answer that they did not consider the inter-state earning in fixing the rate, and there is no proof to show that they did, but on the contrary the proof shows that they took into consideration in fixing this rate a wholly different matter. I therefore decline to pass upon this statute.

Third. The only real question in the case, and the question which has given me most trouble to decide, is the reasonableness or unreasonableness of the rate established by the commission.

When the commission has fixed a rate, our statute makes their findings in the matter *prima facie* correct, and the burden is on the party seeking to impeach it. I have before me in this case not only the findings of the commission, but all the facts upon which they acted leading up to the establishment of the rate from Vicksburg to Meridian. Those facts were, briefly stated, that the railroad itself had given to the Vicksburg dealers who received their grain by way of a certain carrier, what they called a rebuilding rate from Vicksburg to Meridian, whereby the Vicksburg dealer obtained a rate from Vicksburg to Meridian of the same rate that the commission made open to everybody. In other words, any dealer in grain, having his grain consigned to him at Vicksburg over the Vicksburg & Shreveport road, had the privilege for 90 days of shipping that grain so received, or any other grain, to Meridian from Vicksburg at a 3½c. rate, the only restriction being that the Vicksburg dealer could show freight expense bills over the V. S. & P. for the quantity of grain he desired to consign to Meridian. The effect of this arrangement was simply to establish a local rate from Vicksburg to Meridian of 3½c., open for 90 days, and allowable

128 only to such persons as could show that within that time they had received over V. S. & P. as much grain as they desired to ship to Meridian, and that they had not already used these freight bills for shipment to Meridian. Finding this rate in force as above stated, and in the way indicated above, and complaint having been made to them that it was a discrimination in favor of the Vicksburg dealers the commission after hearing fully both sides established a flat rate open to every body, from Vicksburg to Meridian of 3½c. on grain only, confining the rate to the identical article that the railroad was then giving the rate on under the conditions imposed by the railroad. In this view of the case, is the rate unreasonable? In the first place, I question the right of a railroad company, having themselves fixed a rate as reasonable by putting it in force them-

selves, to come into court and assail that rate as unreasonable where they have fixed it, and thereby said that it was reasonable, it strikes me that the proper for-m for them to go to in order to assail the rate, is not into court to have the rate assailed as unreasonable, but to the railroad commission itself and demonstrate that the rate is unjust, and I have no doubt but that body would equitably adjust the matter.

I would have no hesitancy in declaring this rate unreasonable if it were shown that the commission without reason, and arbitrarily reduced the rate on grain and grain products from the tariff rate of 10c. to a rate of three and a half. But the record makes no such case as this. On the contrary it shows that the commission acted from the very best reasons. There was complaint of discrimination in favor of the Vicksburg dealer as against the Meridian dealer; it was that by this so called rebilling rate the Vicksburg dealer was enabled to get the 3½c. rate on the expense bills, and to prevent this discrimination and abuse, and finding the rate already in force at the time, the commission made it a flat rate to everybody, and in the face of these facts I cannot declare that the rate is unreasonable. It is said, it is true, that this rate was not confined
129 to the Vicksburg dealer as such, but that the rate was equally open to everybody on the same terms and conditions that it was opened to the Vicksburg dealer, but in order for the Meridian dealer to avail himself of the rate the grain must have been consigned to Vicksburg in the first instance, and rebilled to Meridian, and in order to do this it would have entailed additional expense on the Meridian dealer, either by keeping an agent at Vicksburg, or maintaining an additional warehouse at Vicksburg, which would impose an additional burden.

It is shown by the testimony of Mr. Harvey that the 3½c. grain rate to Meridian can only be handled by the company at a loss. This 3½c. rate, or reduction by the commission on the tariffs, was only made as to grain and grain products. I think I may say upon safe authority, that where the entire business of a railroad shows a profit, the commission may establish a rate on a particular article of freight which is below the cost of haul of the single article, provided that in doing so, a margin of profit is left on the entire business.

25 Florida, 310;
89 American St., 514 and note;
186 U. S. Reports, 257.

Where a road is properly managed and handled, both as to construction and operation, and is surrounded by such ordinary conditions as all other railroads as to the getting of business, a rate is reasonable or unreasonable which admits of, or denies a reasonable return of profit. But profit is not the sole test of reasonableness of freight rates. A road might be so circumstanced by isolation as to negative the idea that it ever could be operated with a successful

return to the owners. In such a case a rate reasonable in itself would not be declared unreasonable merely from the fact that the owners could not make a return of profits on its operation. The public have the right of carriage at reasonable rates, and the carriers have right to a profit on rates which are reasonable.

The courts have said that in the determination of what
130 are reasonable rates, the State commission cannot take into consideration the inter-state business. The entire business done over this road shows a profit. If on the entire business done over the road there is a profit, the commission may reduce the rate on a particular article of freight below the cost of haul if a profit is left on the entire business. I do not understand that the commission may do this arbitrarily, but only for reasons of strongest necessity, or to prevent abuses and discriminations, in short, for good reasons. It is stated by Mr. Harvey and others that only 37 % of the business done by the road is local business, and 63 % inter-state business, and that upon the local business there is a loss to the company. But when Mr. Harvey, on whom the burden of proof is cast, is called upon to show that he says "Neither in our records, or book-keeping, nor in any other manner, has our company, any accurate way of apportioning the cost of expense between the State and inter-state." When the railroad commission were sitting to hear the facts and determine the reasonableness of this rate, they were sitting — a quasi judicial capacity, charged with a knowledge of the law, and attempting to enforce it. They fixed this rate of 3½c. after a full hearing, and their act is made by law *prima facie* correct. The burden of proof when their action is sought to be impeached, is cast upon the party assailing it, and cannot be overthrown by the statement that the local business is being run at an expense unless the showing is made. But, even if it be true that the local business does not pay, due regard must be *and* to the rights of the public, and where a profit is shown on the entire business of the company, the local business cannot be made to pay by permitting the company to charge unreasonably high rates for the purpose of making a profit on the local business. Reasonable rates are not applied *alone to the interest of the company*, but have application to the public as well.

For the reason above given I direct that the injunction be dissolved and the bill dismissed.

Done this the 9th. day of July, 1904.

ROB'T B. MAYES, Chancellor.

131 Bond for Appeal with Supersedeas.

Know all men by these presents that we The Alabama & Vicksburg Railway Company, principal, and Thomas A. McWillie and Robert H. Thompson, sureties, are held and firmly bound unto the Railroad Commission of the State of Mississippi in the sum of one thousand dollars, for the payment of which we hereby bind ourselves

jointly and severally firmly by these presents, signed and dated this 21st day of July A. D. 1904.

The condition of this obligation is such that whereas on the 11th day of July A. D. 1904 in a certain cause therein pending wherein said Alabama & Vicksburg Railway Company is complainant and said Railroad Commission is defendant a decree was rendered dissolving the injunction granted therein and dismissing complainant's bill of complaint, in and by which said decree an appeal therefrom to operate as a supersedeas was granted to said complainant upon the execution of a supersedeas bond in the sum of one thousand dollars.

Now therefore if the said Alabama & Vicksburg Railway Company shall satisfy the said decree complained of and also such final judgment and decree as may be made in the cause, and all costs, then this obligation to be void: otherwise to remain in full force and effect.

ALABAMA & VICKSBURG RAILWAY COMPANY,
By McWILLIE & THOMPSON,
Att'ys of Record.

ROB'T H. THOMPSON,
THOS. A. McWILLIE, Att'ys of Record.

THE STATE OF MISSISSIPPI,
Hinds County, City of Jackson.

Personally appeared before me the undersigned notary public in and for said city, county, and State, the above named Robert H. Thompson and Thomas A. McWillie, who being duly sworn depose and say that they are free-holders in said State and own property of the value of one thousand dollars each in his own right over and above all of their debts, liabilities and exemptions.

THOS. A. McWILLIE.
R. H. THOMPSON.

Sworn to and subscribed before me this — day of July A. D. 1904.

[SEAL.] J. H. THOMPSON,
Notary Public.

132 Certificate.

STATE OF MISSISSIPPI,
Hinds County.

I, W. W. Downing, clerk of the chancery court in and for the county of Hinds in the State of Mississippi certify that the preceding one hundred and twenty five pages contain a true and perfect transcript of the cause therein stated of The Alabama and Vicksburg Railway Company against The Railroad Commission of the State

of Mississippi No. 2386 on the docket of said court in and for the first district of said county—as the same remains of record and on file in my office in the city of Jackson in said district, county and State; omitting such parts as the agreement of counsel set forth therein shows was to be omitted and I further certify that the said transcript of record was fully completed on or before the 10 of August and before the issuance of the revised rules of the supreme court of September 1st, 1904, except the last twelve or thirteen pages thereof.

In witness whereof, I have hereunto affixed my signature and the seal of said chancery court at office at Jackson in said county and State this the 13th day of September 1904.

W. W. DOWNING, Clerk,
By HENDON M. HARRIS, D. C.

133 Assignment of Errors.

In the Supreme Court of Mississippi, First District, November Term, 1904.

ALABAMA & VICKSBURG RAILROAD CO.
*v.*
RAILROAD COMMISSION OF STATE OF MISSISSIPPI.

Comes the appellant by its solicitors and for error in the record and proceedings of the court below in the above cause, says:

1. The court below erred in rendering a final decree dissolving the injunction and dismissing the bill of complaint in said cause.

2. The court below erred in not granting complainant the relief prayed by its bill and in not making said injunction perpetual by its final decree.

Wherefore &c.

McWILLIE & THOMPSON,
Solicitors for Appellant.

Oral argument is desired in this case.

McWILLIE & THOMPSON,
Solicitors for Appellant.

We acknowledge receipt of a copy of the above assignment of errors and of briefs for appellant. Nov. 9th 1904.

ALEXANDER & ALEXANDER,
Solicitors for Appellee.

134 Decree of Court.

April Term, A. D. 1905.

MONDAY, May 8th, 1905.

ALABAMA & VICKSBURG RAILROAD CO. v. RAILROAD COMMISSION OF MISSISSIPPI. } 11364.

This cause having been submitted on a former day of this term on the record herein, from the chancery court of Hinds county, 1st district, and this court having sufficiently examined and considered the same, and being of opinion that there is no error therein, doth order adjudge and decree, that the decree of said chancery court rendered in this cause on the 11th day of June A. D. 1904. be and the same is hereby affirmed by this court, and that the appellees do have and recover of the appellant and R. H. Thompson and T. A. McWillie, sureties on the supersedeas bond, the costs of this cause in this court and in the court below to be taxed &c.

135 ALABAMA & VICKSBURG RAILWAY COMPANY v. THE RAILROAD COMMISSION OF MISSISSIPPI. } Opinion of the Court.

TRULY, J.:

Many important questions are pressed on our consideration which in view of our conclusion we have found it unnecessary to discuss or decide.

The facts which are decisive of this controversy are very few and a statement of them eliminates from consideration many of the more difficult questions urged by counsel. On December 13th, 1902, the board of trade of Meridian presented to the railroad commission of Mississippi a petition praying that the proportionate rate of three and one-half cents then in effect from Vicksburg to Meridian, be made an open rate subject to use of all shippers from Vicksburg. The rate referred to in the petition was a rate on grain and grain products handled in car load lots. This class of freight under the guise of a "re-billing rate" was transported from Vicksburg to Meridian at the rate of three and one-half cents per cwt.

After full investigation the railroad commission on November 16th, 1903, passed an order directing the Alabama & Vicksburg Railway Company "to put in effect over its line of road from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after Dec. 8th, 1903, a flat rate of three and one-half cents per hundred pounds on grain and grain products and no more." The general terms of this order being limited, however, to grain and grain products handled in car load lots, this being the extent of the prayer of the petition filed with the commission.

Against the enforcement of this order the appellant procured an injunction. On final hearing on bill, answer, exhibits and proofs, the injunction was dissolved and a decree rendered dismissing the bill of complaint and from that decree this appeal is prosecuted.

In reviewing the action of the railroad commission in promulgating the order in question, it is necessary, to determine the justice and correctness of their action and their power and authority in the premises, to note the exact condition of affairs as they existed at and before the filing of the petition by the Meridian board of trade.

136 Vicksburg and Meridian, 140 miles distant one from the other, are the termini of the Alabama & Vicksburg Railway Company; Vicksburg, situated on the Mississippi river, has the advantage of both railroad and river competition; Meridian is a railroad centre of considerable importance. In both cities there are many jobbers and wholesale dealers handling grain and grain products in large quantities and doing an extensive business, both locally, by wagon trade, and over the railroads with adjacent towns. The authorized all rail interstate rate on grain and grain products in car load lots from the chief market in the West to Vicksburg, is twelve cents, to Meridian, is fourteen cents. On account of the material advantage due to river competition, Vicksburg handles a portion of its business in grain and grain products by barge and gets the cheaper rate incident to water transportation during some seasons of the year. The minimum river or barge rate being admittedly lower than the all rail rate. In July 1902 the Alabama & Vicksburg Railway Company put into effect a so called "re-billing" rate of three and a half cents per hundred pounds on grain and grain products, effective from Vicksburg to Meridian. A true re-billing rate is one in which goods received in unbroken car load lots over one line of railway can be re-billed over the same or another line completing one continuous trip, of the same commodity, simply changing the consignee and altering the destination of the identical shipment without unloading or handling of freight. What is denominated a re-billing rate in this record, does not, as actually employed, comply with the definition above given, in several most important particulars. In the first place, the rate is not applied to consignments arriving over all connecting lines, but is only available to those receiving freight over the Vicksburg, Shreveport & Pacific railroad. In the second place the freight reconsigned over the Alabama & Vicksburg Railway line did not complete one continuous trip, without handling or unloading, and as not necessarily, or even generally, the identical shipment which was originally consigned to the merchant in Vicksburg. The custom being that dealers in Vicksburg handling freight over the Vicksburg, Shreveport & Pacific Railroad Company could save their "expense bills" (or receipts showing the amount of freight which he had received over that line) and be granted the privi-

lege within ninety days from date of such receipts, of
137 shipping freight of an equal quantity over the line of the appellant at the re-billing rate of three and one half cents per cwt. Thus, a merchant receiving a car load of oats over the Vicksburg Shreveport & Pacific railroad could within ninety days of that date ship over appellant's line a car load of corn or other grain product without regard to the source from which it was procured. The result of this was that the merchant in Vicksburg who patronized the Vicksburg, Shreveport & Pacific Railroad Company could receive any amount of grain product by barge or otherwise, and keep it stored in his warehouse with the full assurance that he could at any time within the period stated have the advantage of this cheap rate, over appellant's line, whereas the merchant not dealing with this specially favored "associated line" was denied the same rate. The only condition precedent to the enjoyment of the re-billing rate being that the consignor must first have received an equal quantity of freight over the line of the Vicksburg, Shreveport & Pacific railroad. The effect of this custom was, as developed by the uncontradicted evidence, that while the Vicksburg dealer could not deliver grain products at the city of Meridian any cheaper than could the Meridian dealer, he could undersell and make prompter delivery in the towns adjacent to Meridian, and by natural location within its territory, being able by operation of this arrangement to reach Laurel or Hattiesburg three cents per cwt. cheaper than could the Meridian dealer. So a dealer in Vicksburg receiving a barge of corn by river could ship it under the guise of re-billing over appellant's road at three and one half cents per hundred pounds, while the Meridian dealer who might also receive a barge of corn at Vicksburg could only ship over the appellant's road by paying the prohibitive local rate of ten cents per hundred pounds. This statement brief as it is, is sufficient to demonstrate that the practical working of the socalled re-billing rate was to give a very great advantage, to those receiving freight over the Vicksburg, Shreveport & Pacific Railroad Company and to unjustly discriminate against all but this specially favored class. The result being that the Vicksburg dealer could with impunity invade the territory adjacent to Meridian and undersell its dealers at points more distant from Vicksburg and to reach which
it was necessary to pass through Meridian. That this was
138 the inevitable result of the arrangement in question is practically confessed by the appellant, but the force of the admission is sought to be avoided in two ways: First, it is said that the establishing of the re-billing rate was not a voluntary act on the part of the appellant but that the plan was inaugurated under compulsion by reason of the "threat" and "menace" of the railroad commission to put into effect a flat rate of three and one half cents, if appellant declined to adopt the re-billing arrantement herein referred to. That the appellant while realizing that the rate was unreasonably low deemed it wiser to endure that ill rather than face other evils which it apprehended might be inflicted by the rail-

road commission. While this is the distinct statement of the witnesses for appellant, we are constrained to hold in the absence of record proof showing any official action by the railroad commission, that the putting in force of the re-billing rate in question was a voluntary act of the appellant. We are strengthened in this view by the uncontroverted statement in the record that at periods prior to the establishing of the present arrangement, other rates had been in force under which the appellant received no more for its services than it would under a uniform flat rate of three and one half cents. Again we do not recognize it as a possibility under any contingency that the railroad commission of Mississippi would, or need employ threat or menance to protect the rights of the public from the aggression or extortion of corporations. We rebuke the intimation as an unwarranted aspersion of the railroad commission. A State tribunal charged with the duty of exercising "a watchful and careful supervision over the *g*ariffs of charges of every railroad," and of revising "the same from time to time as justice to the public and the railroad may require," is clothed by law with necessary power to achieve the purposes of its existence, without resorting to menace or threat to extort from any corporation subject to its lawful supervision an unreasonable reduction of rates. Nor do we admit that the necessity can ever exist for appellant, or any other corporation, to submit to unjust or unauthorized regulations by the railroad commission of Mississippi, when the courts of the land stand ever open, able and willing to protect them from any oppressive action. If in fact it be true, that the so-called re-billing rate establishes an unreasonably low compensation for the transportation of grain and grain products, the same was
139 inaugurated by order of the commission then the appellant had a complete and adequate remedy by contesting in a legal way the reasonableness of the rate, and the power of the railroad commission to enforce it. We express no opinion, because not involved necessarily in the determination of this particular suit, as to whether the railroad commission would have had the authority to establish in the first instance the re-billing arrangement now in force. This record does not show that the rate was established in pursuance of any official order or action on the part of the railroad commission. We deal with facts as we find them.

In the next place, it is urged by the appellant that the re-billing arrangement operates uniformly as to all shippers occupying similar positions. That if discrimination results, it is, not on account of the rate itself, but, because of differences in the natural advantages incident to location, which one shipper has over another. It is insisted that the appellant denies to no one, who will comply with its conditions, the right to avail himself to the fullest extent of the advantage of the same rate which is granted to other dealers. That if the Meridian dealer will receive freight over the Vicksburg, Shreveport & Pacific railroad consigned to him at Vicksburg, that he can thereafter within ninety days also re-bill freight to an equal

amount over appellant's line at the same rate given the Vicksburg dealer. And this, it is urged, is a granting of the same privileges to all, and that therefore appellant is not guilty of unjustly discriminating against one, or unfairly favoring another class of shippers. But the condition prerequisite to the enjoyment of the re-billing rate, is in and of itself a discrimination. No one is granted the rate who has not first received an equal amount of freight over the Vicksburg, Shreveport & Pacific railroad, and who can produce "expense bills" paid within ninety days of the proposed shipment. The necessary result being that the Meridian dealer having no means of disposing of the freight arriving over the Vicksburg, Shreveport & Pacific railroad cannot accumulate the "expense bills" demanded. Hence such shipper can only re-bill, the identical commodity and car originally consigned to him, which goes forward and completes one continuous journey. This is a "re-billing" in its true meaning, and no one could justly complain if this plan was strictly enforced and uniformly adhered to. But as hereinbefore pointed out the plain plan now in vogue between the appellant and the Vicksburg,
140 Shreveport & Pacific Railroad Company does not operate fairly or uniformly. In this: The Vicksburg dealer having disposed locally of the original shipments received by him over the Vicksburg, Shreveport & Pacific railroad, presents his accumulated "expense bills" and "re-bills" freight, received by him by barge or over the Yazoo & Miss. Valley railroad, under a rate cheaper than that granted the general public, to points by location naturally tributary commercially to Meridian. The statement of appellant that if the Meridian dealer will comply with certain required conditions that he can enjoy the same privileges, while phrased with specious fairness, it is in truth but making an offer of which stress of known and insuperable circumstances prevents acceptance or enjoyment. It is simply tantamount to saying that if he will become a Vicksburg dealer, then he can have the same rate that other dealers so situate- enjoy. This is the one thing that makes the operation of the rule a discrimination in favor of a Vicksburg dealer, and the only fact that gives the Meridian dealer the right to complain.

A "re-billing" rate to receive the sanction of law must operate uniformly and fairly and must be open to all alike. It cannot lawfully be restricted to shippers who live in a certain locality and who previously receive freight over a certain other associated carrier.

This consideration alone furnishes conclusive proof that the plan, in this record courteously termed a "re-billing arrangement," is, in truth but a flimsy disguise for a plan which operates to the benefit primarily of the Vicksburg, Shreveport & Pacific Railroad Company, secondarily, and perhaps incidentally, to the advantage of the Vicksburg dealer, and ultimately but inevitably to the marked damage of the Meridian dealer. In a vague and shadowy way this arrangement is sought to be justified by the officials of the appellant by showing that in consideration thereof appellant is granted an extra

proportion of freight and certain special privileges as to the use of cars by the Vicksburg, Shreveport & Pacific Railroad Company. It is not shown that the same privileges could not have been obtained from the Yazoo & Miss. Valley Railroad Company. Nor, except in a most insubstantial manner, is it shown how a car received and unloaded on one day can be utilized in the hauling of another shipment made, perchance ninety days thereafter. Or how it can
141 benefit the appellant, especially in view of the fact that the demand for empty cars must necessarily vary daily according to the pressure of traffic, and it is impossible to foretell what the demand may be at any stated future time. But if these facts be granted, and the moving considerations such as would stand the test as a permissible interstate traffic arrangement, still the incurable vice in the arrangement is in the unfair and discriminatory manner in which it is enforced, and the special privileges enjoyed by one, but from which another class of shippers is debarred.

The practical operation of the plan being thus demonstrated as causing a gross discrimination, the next question presented is whether the State railroad commission was vested with authority to pass the order, the enforcement of which is now assailed. The effect of the order being simply to convert the then existing so-called re-billing rate into an open or flat rate, with the result that all dealers handling grain or grain products in car load lots could enjoy the rate then in force from Vicksburg to Meridian. It will be noted that the rates then in existence were left undisturbed, the only change wrought by the order being to abolish the condition precedent insisted on by appellant restricting the rate to the exclusive benefit of such as had received previous and equal shipments over its associated line. The question propounded is easy of solution in view of the provisions of § 4297, Code 1892. That section authorizes the commission to docket, hear and determine all complaints made of any tariff of rates, joint or several, made by any railroad or fixed or approved by the commission on the ground that the charges are for more than just compensation or that such charges or any of them, amount to or operate so as to effect unjust discrimination. And when by regular procedure and full investigation and after hearing proof the commission is satisfied of the truth of the statement and the justice of the complaint, it is given express authority to give notice to the railroads concerned of any change deemed proper and to require compliance with such orders. That is the exact legal status of the order presented to us for review. A tariff or rate had been established by the voluntary action of the railroad company; that tariff operated to work unjust discrimination; complaint was made; the proof fully supports the justice and the truth of the grounds on which the complaint is based; that proof satisfied the
142 chancellor, and it satisfies us, that the so-called re-billing arrangement was simply a cloak assumed to conceal an arrangement which while ostensibly granted as a concession to the Vicks-

burg dealers, was in truth, devised for the ulterior purpose of fostering the interests of the Vicksburg, Shreveport & Pacific Railroad Co. and, perhaps, as it is argued, to maintain present rates to Meridian for the benefit of an associated and connecting railroad at that point. In such state of case the power of the commission to make any change which justice may demand is unquestionably so well established that we deem any citation or authorities further than a reference to the briefs of counsel, a work of super-ogation. It is urged, however, by the appellant that inasmuch as its intra-state business only yields a certain stated percentage, less than one half, of its gross revenues, that it does not in fact pay the expenses of maintaining and operating its road within the borders of the State, and therefore a reduction of existing rates is an indirect placing of a burden on interstate business and this is expressly condemned as unlawful by the adjudication of the Supreme Court of the United States. To this argument it is replied by appellee that it is not shown with any degree of certainty the proportionate amount of the gross operating expenses of the railroad company incurred on account of the intra-state business, but this amount is only arrived at by estimation, and, therefore, this court cannot say as a matter of fact, in the absence of positive proof, that the intra-state business of the appellant does result in a net annual loss, and as the findings of the railroad commission are dealt with as being *prima facie* correct, in the absence of direct proof of error, this court will affirm its findings of facts.

Again it is stated by the appellant that the hauling of grain and grain products at a flat or open rate of three and one half cents per hundred pounds would produce less than the actual cost of transporting the freight, so that the more business of this character the appellant handles the greater its loss. That this in effect is the taking of the property of appellant without due process of law, wherefore the order is void as being in contravention of the Constitution of the United States. To this it is replied that the figures shown in the record do not prove that freight handled in the usual and customary course of business as freight trains are ordinarily constructed, at the rate established would result
143 in a loss. Again it is said, in further answer to this contention, that appellant is only entitled to fix such tariff of charges as will yield a fair compensation for the transportation and handling of freight and assure that the net profits arising from appellant's entire business, after payment of all operating expenses, will pay a reasonable interest on the value of its property, and as the real value of the property is not disclosed by the record, the appellant has no ground of complaint on this score, and the court is furnished no definite proof to justify a finding of fact that the owners do not receive reasonable returns from their investment.

We decline to enter upon a discussion of either question, neither is necessarily involved in the decision of this case. It might be conceded that the intra-state business of the railroad results in a net

loss, and might further be conceded that the transporting and handling of grain and grain products at the rate established, may not in actual operation bring a fair remuneration when limited to that one commodity, nevertheless the rate having been established by the voluntary action of the appellant it must not be so enforced as to operate as an unjust discrimination against any one. If the appellant chooses to establish as to a certain favored class of shippers a rate so low as to be unremunerative, justice demands, and the law will require, that the rate be granted to all alike. "Special privileges to none" is the rule of action by which common carriers must measure their conduct.

The decree is affirmed.

144 Writ of Error Bond.

Know all men by these presents that we, the Alabama & Vicksburg Railway Co. and Robert H. Thompson and Thomas A. McWillie, as principals, and John Hart and Joseph C. Ward, as sureties, are held and firmly bound unto the Railroad Commission of the State of Mississippi, in the sum of two thousand dollars, for payment of which well and truly to be made we and each of us bind ourselves and each of us, our heirs, successors, executors and administrators, jointly and severally, by these presents signed and dated this 7th day of July A. D. 1905.

Whereas lately at a supreme court of the State of Mississippi in a suit pending in said court between The Alabama & Vicksburg Railway Company, appellant, and The Railroad Commission of the State of Mississippi appellee, a final decree was rendered against the said Alabama & Vicksburg Railway Company affirming the decree of the chancery court of Hinds county first district, State of Mississippi, dissolving the injunction sued out and dismissing the bill filed by said appellant, and adjudging against said appellant and the said Robert H. Thompson and Thomas A. McWillie sureties on its appeal bond, both the costs of said supreme court and of said chancery court accrued in said cause, and the said Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie have obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the final decree of said supreme court in the aforesaid cause, and a citation directed to the said Railroad Commission of the State of Mississippi, citing and admonishing it to be and appear at a Supreme Court of the United States, to be held at Washington within thirty days from the date hereof.

Now the condition of the above obligation is such that if the said Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their

plea good, then the obligation to be void; else to remain in full force and virtue.

(Signed) ALABAMA & VICKSBURG RAILWAY COMPANY,
By THOMAS A. McWILLIE, Attorney.
THOMAS A. McWILLIE.
ROBERT H. THOMPSON.
JOHN HART.
JOSEPH C. WARD.

I approve the foregoing bond and security this 7th day of July A. D. 1905.

A. H. WHITFIELD,
Chief Justice.

145 Supreme Court of Mississippi, April Term, A. D. 1905.

STATE OF MISSISSIPPI, }
Hinds County. }

I, Geo. C. Myers, clerk of the supreme court of the State of Mississippi, do hereby certify that the foregoing pages contain a true and correct transcript of the record and proceedings had in said court, in the case of The Alabama & Vicksburg Railway Company *vs.* The Railroad Commission of Mississippi, as the same appear of record on file in the supreme court clerk's office of the State of Mississippi.

Witness, the Honorable Albert H. Whitfield, chief justice of our supreme court; also the signature of the clerk, and the seal of said court, hereunto affixed at Jackson, Miss., this the 28th day of July A. D. 1905.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Supreme Court Clerk of Miss.

146 UNITED STATES OF AMERICA, }
State of Mississippi. }

ALABAMA & VICKSBURG RAILWAY COMPANY }
*v.* }
RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI. }

To the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi:

The petition of the Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie respectfully shows that on the 8th day of May, A. D. 1905, the said supreme court rendered

a decree against the petitioners in a certain cause wherein your petitioner The Alabama & Vicksburg Railway Company was appellant and the other petitioners were sureties on its appeal bond, and The Railroad Commission of the State of Mississippi was appellee, wherein and whereby the final decree of the chancery court of Hinds county, first district, State of Mississippi, dissolving the injunction and dismissing the bill of complaint in said cause, was affirmed, and said appellant and its said sureties on its appeal bond adjudged to pay the costs of both the said chancery court and said supreme court, as will appear by reference to the records and proceedings in said cause; that in said suit was drawn in question the validity of a certain order of said railroad commission, dated November 16th, 1903, wherein and whereby said railway company was required to put into effect over its line from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after December 8th, 1903, a flat rate of three and one half cents per hundred pounds on grain and grain products and no more, on the ground that the said rate was unreasonably low and would yield no compensation to said railway company for the use of its property, and that the authority thus exercised by said railroad commission was repugnant to and in violation of amendment V to the Constitution of the United States in
147 that the same provided for the taking of the property of said railway company for public use without just compensation and was repugnant to and in violation of amendment XIV to said Constitution in that it would deprive said railway company of its property without due process of law and deny to it the equal protection of the laws, and the decision of said supreme court was in favor of the validity of said order of said railroad commission and of the authority of said railroad commission to make the same; and that in said suit was also drawn in question the validity of the authority exercised by said railroad commission in making said order on the ground that the same was repugnant to and in violation of clause 3 of section 8 of article 1 of the Constitution of the United States in that the same constituted a burden upon and regulation of interstate commerce, and the decision of said supreme court was in favor of the validity of said order and the authority of said railroad commission to make the same; that in said suit the validity of said order of said railroad commission was drawn in question on the ground that no such low rate was ordered or enforced by said railroad commission on the same or on any other commodity for a like distance on any of the other numerous lines of railroad operating in the State of Mississippi, and that by said order the said State in violation of amendment XIV to the Constitution of the United States, through the said railroad commission as its administrative agency, denied to the said railway company the equal protection of the laws, and the decision of said supreme court was in favor of the validity of said order; that in said suit the Alabama & Vicksburg Railway Company pleaded and contended that the said order of the railroad commission was an order revising,

fixing, and regulating charges for transportation of a railroad, the said railroad commission is required by section 4290 of the Annotated Code of 1892 of the State of Mississippi to take into consideration the entire business of the railroad, and its earnings from all kinds of traffic, and that the sole authority of the railroad commission in revising, fixing and regulating charges for transportation of a railroad depends upon and is conferred by said section of the Mississippi code; that the said statute is invalid and void as being in violation of clause 3 of section 8 of article 1 of the Constitution of the United States conferring upon Congress the exclusive
148 authority to regulate commerce between the States; and that the decision of the said Supreme Court was against the said plea and contention of the Alabama & Vicksburg Railway Company, and in favor of the order of the said railroad commission and of its authority to make the same.

That in the said suit the Alabama & Vicksburg Railway Company pleaded and contended that the sole power of the railroad commission to revise, fix and regulate charges for transportation of a railroad depends upon and is conferred by section 4290 of the Annotated Code of the State of Mississippi of 1892, and that if in fixing the rate of three and one half cents from Meridian to Vicksburg, complained of, the said railroad commission did not take into consideration the entire business of the Alabama & Vicksburg Railway Company and the earnings from all kinds of traffic, it acted without any authority of law, and in that event should its said order fixing said rate be enforced the said Alabama & Vicksburg Railway Company would be deprived of its property without due process of law, and would be denied the equal protection of the law, in violation of the fourteenth amendment of the Constitution of the United States, and that the decision of the said supreme court was against the plea and contention of the Alabama & Vicksburg Railway Company and in favor of said railroad commission and of its authority to make the said order.

And the decision of said supreme court of the State of Mississippi was final and said supreme court was the court of the highest resort in said State.

Wherefore your petitioners are aggrieved and pray for writ of error with citation and supersedeas returnable in the Supreme Court of the United States as provided by law.

As in duty bound, etc., petitioners will ever pray, etc.

ALABAMA & VICKSBURG RAILWAY COMPANY,
By THOMAS A. McWILLIE, Attorney.
ROBERT H. THOMPSON,
THOMAS A. McWILLIE.

STATE OF MISSISSIPPI:

On the foregoing petition, which is accompanied by an assignment of errors, it is ordered that a writ of error be and the same is

hereby allowed as prayed for by petitioners, and that the same be made a supersedeas, the bond in the sum of two thousand dollars ($2,000.00) also presented with said petition being hereby approved.

In testimony whereof witness my hand this 7th day of July A. D. 1905.

A. H. WHITFIELD,
Chief Justice of the Supreme Court
of the State of Mississippi.

149 [Endorsed:] S. C. of M. 11364. Alabama & Vicksburg Railway Co. *et al.*, *v.* Railroad Commission of the State of Mississippi. Petition for writ of error. Filed July 7/05 Geo. C. Myers cl'k.

150 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Mississippi before you, or some of you, being the highest court of law or equity of the said State in which a rendition could be had in the said suit between The Alabama & Vicksburg Railway Company, complainant and plaintiff in error, and The Railroad Commission of the State of Mississippi, defendant and defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie, sureties on its appeal bond, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the

date hereof, that the record and proceedings aforesaid being in
spected, the said Supreme Court may cause further to be done
151 therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 7th day of July, in the year of our Lord one thousand nine hundred and five.

{ Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi. }

L. B. MOSELEY,
Clerk of the United States Circuit Court for the
Southern District of the State of Mississippi.

Allowed by
A. H. WHITFIELD,
Chief Justice of the Supreme Court
of the State of Mississippi.

152 [Endorsed:] 11364. Alabama & Vicksburg Railway Co. *et al. v.* Railroad Commission of the State of Mississippi Writ of error Filed July 7/05 Geo. C. Myers, clerk.

153 STATE OF MISSISSIPPI:

In the Supreme Court, April Term, 1905.

ALABAMA & VICKSBURG RAILWAY COMPANY
*v.*
RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

I, Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi, at the present term and upon the argument and hearing of the above entitled appeal do hereby certify:

1. That upon the said argument and hearing was drawn in question the validity of a certain order of said railroad commission dated November 16th, 1903, wherein and whereby said railway company was required to put into effect over its line from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after December 8th, 1903, a flat rate of three and one half cents per hundred pounds on grain and grain products, and no more, on the ground that the said rate was unreasonably low and would yield no compensation to said railway company for the use of its property, and that the authority thus exercised by said railroad commission was repugnant to and in violation of amendment V to the Constitution of the United States, in that the same provided for the taking of the property of said railway company for public use without just compensation, and of amendment XIV to said Constitution in that it would deprive said railway company of its property without due

process of law, and deny to it the equal protection of the law, and that the decision of said supreme court was in favor of the validity of said order and of the authority of said railroad commission to make the same.

2. That upon the argument and hearing the validity of the authority exercised by said railroad commission in making said order was drawn in question on the ground that the said order was repugnant to and in violation of clause 3 of section 8 of article 1 of the Constitution of the United States in that the same constituted a burden upon and regulation of interstate commerce and that the
154 decision of said supreme court was in favor of the validity of said order and of the authority of said railroad commission to make the same.

3. That upon the argument and hearing the validity of said order of said railroad commission was drawn in question on the ground that no such low rate was ordered or enforced by said railroad commission on the same or any other commodity for a like distance on any of the other numerous lines of railroad operating in the State of Mississippi, and that by said order the said State in violation of amendment XIV of the Constitution of the United States, through said railroad commission as its administrative agency, denied to the said railway company the equal protection of the law and that the decision of said supreme court was in favor of the validity of the said order, and of the authority of said commission to make the same.

4. That upon the argument and hearing the Alabama & Vicksburg Railway Company pleaded and contended that the said order of the railroad commission was an order revising, fixing and regulating charges for transportation by it; that in revising, fixing and regulating charges for transportation of a railroad, the said railroad commission is required by section 4290 of the Annotated Code of 1892 of the State of Mississippi to take into consideration the entire business of the railroad and its earnings from all kinds of traffic, and that the sole authority of the railroad commission in revising, fixing and regulating charges for transportation of a railroad depends upon and is conferred by said section of the Mississippi code; that the said statute is invalid and void as being in violation of clause 3 of section 8 of article 1 of the Constitution of the United States, conferring upon Congress the exclusive authority to regulate commerce between the States; and that the decision of the said supreme court was against the said plea and contention of the Alabama & Vicksburg Railway Company, and in favor of the order of said railroad commission and of its authority to make the same.

5. That upon the argument and hearing, the Alabama & Vicksburg Railway Company pleaded and contended that the sole power of the railroad commission to revise, fix and regulate charges for transportation of a railroad depends upon and is conferred by section 4290 of the Annotated Code of the State of Mississippi of 1892, and that if in fixing the rate of three and one half cents from

Vicksburg to Meridian, complained of, the said railroad commission did not take into consideration the entire business of the Alabama & Vicksburg Railway Company and the earnings from all kinds of traffic, it acted without any authority of law, and in that event should its said order fixing said rate be enforced the said Alabama & Vicksburg Railway Company would be deprived of its property without due process of law, and would be denied the equal protection of the law, in violation of the fourteenth amendment to the Constitution of the United States, and that the decision of the said supreme court was against the plea and contention of the Alabama & Vicksburg Railway Company and in favor of said railroad commission and of its authority to make the said order.

In witness whereof, I hereunto subscribe my name this 7th day of July, in the year of our Lord one thousand nine hundred and five.

A. H. WHITFIELD,
Chief Justice of the Supreme Court
of the State of Mississippi.

155 [Endorsed:] S. C. of M. 11364. Alabama & Vicksburg Railway Co. *et al.* v. Railroad Commission of the State of Mississippi. Certificate of chief justice. Filed July 7/05. Geo. C. Myers, clerk.

156 Supreme Court of the United States, —— Term, A. D. 1905.

THE ALABAMA & VICKSBURG RAILWAY COMPANY ET AL., Plaintiffs in Error,
v.
RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI, Defendant in Error.

Afterwards, to wit, on the — day of ——, A. D. 1905, before the justices of the Supreme Court of the United States at the Capitol in the city of Washington, come The Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie, plaintiffs in error, by their attorney and the attorney of each of them, Harry H. Hall, and say that in the record and proceedings aforesaid there is manifest error in the particulars following, to wit:

1. The said supreme court of the State of Mississippi erred in rendering the judgment of May 8th, 1905, wherein and whereby the final decree of the chancery court of Hinds county, first district, State of Mississippi, dissolving the injunction and dismissing the bill in said cause was affirmed and the costs of said chancery court and of said supreme court adjudged against the said Alabama & Vicksburg Railway Company and the said Robert H. Thompson and Thomas A. McWillie.

2. The said supreme court erred in holding that the order of said

railroad commission dated November 16th, 1903, wherein and whereby said railroad company was required to put into effect over its line from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after December 8th, 1903, a flat rate of three and one half cents per hundred pounds on grain and grain products and no more was valid, contrary to the contention of said railway company that said rate was unreasonably low and would yield no compensation to it for the use of its property, and that the authority thus exercised by said railroad commission is repugnant to and in violation of amendment V to the Constitution of the United States in that the same provided for the taking of the property of said railway company for public use without just compensation, and of amendment XIV to said Constitution in
157 that it would deprive said railway company of its property without due process of law and deny to it the equal protection of the law.

3. The said supreme court erred in holding that the said order of said railroad commission was valid, contrary to the contention of said railway company that the same was repugnant to and in violation of clause 3 of section 8 of article 1 of the Constitution of the United States in that the same constituted a burden upon and a regulation of interstate commerce.

4. The said supreme court erred in holding that the said order of said railroad commission was valid, contrary to the contention of said railway company that no such low rate was ordered or enforced by said commission on the same or any other commodity for a like distance on any of the numerous other railroad lines operating in the State of Mississippi and that by said order the said State of Mississippi in violation of amendment XIV of the Constitution of the United States, through the said railroad commission as its administrative agency, denied to said railway company the equal protection of the law.

5. The said supreme court erred in holding that the said order of said railroad commission was valid, contrary to the contention of said railway company that said order was one regulating and fixing a rate or charge for transportation, that section 4290 of the Annotated Code of 1892 of the State of Mississippi was the sole authority of said railroad commission for exercising the power of regulating and fixing rates of transportation by railroads and that in and by said section it was provided, in violation of clause 3 of section 8 of article 1 of the Constitution of the United States committing to the Congress the exclusive authority to regulate commerce between the States, that in revising, fixing and regulating charges for transportation said commission should take into consideration the entire business of the railroad and its earnings from all kinds of traffic.

6. That the said supreme court erred in holding that the said order of the said railroad commission was valid, contrary to the contention of the said railway company that if in fixing the rate of three and one half cents from Vicksburg to Meridian the said rail-

road commission did not take into consideration the entire business of the Alabama & Vicksburg Railway Company and its earnings from all kinds of traffic, it acted without any authority of law, and in that event should its order in fixing said rate be enforced said Alabama & Vicksburg Railway Company would be deprived of its property without due process of law, and would be denied the equal protection of the law, in violation of the fourteenth amendment to the Constitution of the United States.

And the said Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie pray that the judgment aforesaid may be reversed, annulled and altogether set for naught, and that they may be restored to all things which they have lost by occasion of said judgment.

HARRY H. HALL,
THOMAS A. McWILLIE, AND
ROBERT H. THOMPSON,
Attorney- for Plaintiffs in Error.

158 [Endorsed·] S. C. of M. 11364 Alabama & Vicksburg Railway Co. *et al. v.* Railroad Commission of the State of Mississippi Assignment of errors Filed July 7/05 Geo. C. Myers clerk.

159 UNITED STATES OF AMERICA, *ss:*

To the Railroad Commission of the State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to a writ of error filed in the supreme court of the State of Mississippi, wherein The Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the final decree of said supreme court rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi, this 7th day of July, A. D. 1905.

A. H. WHITFIELD,
Chief Justice of the State of Mississippi.

UNITED STATES OF AMERICA,
Southern District of the State of Mississippi.

Received the above citation on the 7th day of July, A. D. 1905, and served the same on this 8th day of July, A. D. 1905, on the defendant in error, The Railroad Commission of the State of Mississippi by reading the same to S. D. McNair, president of said railroad commission, and also by delivering to him in his hands a true

and exact copy of the same, also delivering to him at the same time a true and exact copy of the writ of error in said cause issued pursuant to the fiat of Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi, by L. B. Mosley, clerk of the circuit court of the United States in and for the south-
160 ern district of Mississippi this 8th day of July, A. D. 1905.

EDGAR S. WILSON,
U. S. Marshal,
By EDGAR S. WILSON, JR., Deputy.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Personally appeared before me L. B. Mosley, clerk of the circuit court of the United States in and for the southern district of Mississippi, Edgar S. Wilson, Jr., a regular deputy marshal of the United States in and for said district and State, duly appointed according to law, who being by me first duly sworn on oath says that the foregoing return made by him of the service of the citation and a copy of the writ of error in this cause of The Alabama & Vicksburg Railway Company and others, plaintiffs in error, against The Railroad Commission of the State of Mississippi, defendant in error, made on the said defendant in error on the 8th day of July, A. D. 1905, is true in every particular.

EDGAR S. WILSON, JR.,
Dep. U. S. Marshal.

Sworn to and subscribed before me this 8th day of July, A. D. 1905.

Witness my signature and official seal.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, Clerk.

161 [Endorsed:] Entered No. 945 page 216. 11364 Alabama & Vicksburg Railway Co. *et al. v.* Railroad Commission of the State of Mississippi Citation. Filed July 8/05 Geo. C. Myers cl'k. J. R. McDowell D. C. Received in office Jul- 7, 1905 Delivered for service to Deputy Edgar S. Wilson, Jr., Jul- 7, 1905 at Jackson, Miss.

| | |
|---|---|
| Fees | 4.00 |
| Ex | 0.00 |
| | $4.00 |

Endorsed on cover: File No. 19,873. Mississippi supreme court. Term No. 371. Alabama & Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie, its sureties, plaintiffs in error, *vs.* The Railroad Commission of the State of Mississippi. Filed August 14th, 1905. File No. 19,873.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

Term No. 371.

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ALABAMA & VICKSBURG RAILWAY CO.
v.
THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

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STIPULATION TO CORRECT RECORD.

We, the undersigned solicitors of the parties plaintiff and defendant in error, hereby admit that the transcript of the record on file in the above cause is incorrect in the following particulars, viz: In the last sentence of the answer to the rule on the plaintiff in error for information signed by Larz A. Jones, auditor, on page 16 of the printed record, the words "The proportion of the receipts derived from *interstate* traffic" are erroneously copied from the transcript on file in the supreme court of Mississippi, and to conform to said transcript should read "The proportion of the receipts derived from *intrastate* traffic;" and in paragraph VII of the answer of the defendant in error to the bill of complaint, on page 23 of said printed record, the words, "Responding to paragraph ten of the complaint, respondent says that in the fixing the rate complained of it did *not* take into consideration the entire business of the complainant railroad" are erroneously copied from said transcript on file in said supreme court of Mississippi and *and* should read, "Responding to paragraph ten of the complaint respondent says that in fixing the rate complained of it *did* take into consideration the entire business of the complainant railroad," and we agree that the printed record on file herein may be corrected in the above particulars so as to conform to the record on file in the supreme court of Mississippi.

Witness our hands this 7th day of December, 1905.

HARRY H. HALL,
Sol'rs for Plaintiff in Error.
MONROE McCLURG,
HANNIS TAYLOR,
Sol'rs for Defendant in Error.

[Endorsed:] File No. 19,873. Supreme Court U. S., October term, 1905. Term No. 371. Ala. & Vicksburg Ry. Co. *et al.*, P. E., vs. The R. R. Com'n of the State of Miss. Stipulation to correct record. Filed Dec. 18, 1905.

FILE COPY.

FILED
DEC 18 1905
JAMES H. McKENNEY,
Clerk.

# No. [illegible] 97

# SUPREME COURT OF THE UNITED STATES,

**OCTOBER TERM, 1905.**

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ALABAMA & VICKSBURG RAILWAY COMPANY,
*Plaintiff in Error,*

*vs.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
*Defendant in Error.*

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## BRIEF OF ARGUMENT AGAINST MOTION TO DISMISS.

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HARRY H. HALL,
*Counsel for Ala. & Vicksburg Ry. Co.*

# SUPREME COURT OF THE UNITED STATES,

**OCTOBER TERM, 1905.**

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ALABAMA & VICKSBURG RAILWAY COMPANY,
*Plaintiff in Error,*

*vs.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
*Defendant in Error.*

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## BRIEF OF ARGUMENT AGAINST MOTION TO DISMISS.

The motion to dismiss or affirm for want of a Federal question involves the consideration of the whole case and should be taken on submission to be decided after the whole case has been tried.

The brief for the motion very incompletely states the case. If it be conceded that the rebilling rate of 3½ cents was a voluntary one, it was only voluntary when coupled with the incidents and conditions upon which it had been assented to by the railway company. When these incidents and conditions were the inducement that led the railway company to tolerate the rate, the commission cannot claim that the rate is the same voluntary one when disconnected by its action with such incidents and conditions. The record shows without controversy that the railway company agreed to put in the rate of 3½ cents per 100 pounds only as a rebilling rate,

and the order of the Commission requires it to put in a flat rate of the same amount; that is to say, a rate on all shipments from Vicksburg to Meridian, with Vicksburg as the point of origin. It shows further that the 3½-cent rate yielded no direct profit, and the railway company consented to it as a rebilling rate, because when operated as a rebilling rate it would give the company the control of the freight cars in which grain products had been brought south for utilization in shipments to the north, and, too, because it was allowed to participate by its western connections in a slight degree in the interstate charge to Vicksburg. If it be unlawful for a railway company to give a rebilling rate from a point on interstate shipments which reach that point over one railway line and not give it to those reaching it over another railway line, which we deny, it would seem that the other railway line is the only party who can complain, and certainly this is true where as in the present instance the shipments are of grain and grain products, all of which reach the city from the same recognized grain producing centres in other States, and the interstate rate on all the railroads is the same. Manifestly dealers who wish to avail of the rebilling rate have no greater interstate charge to meet than if the shipments were made by another line. In other words, this is a matter in which dealers have no interest—the interstate rate being the same on all the lines. There are but two other lines reaching Vicksburg besides that of the plaintiff in error, and the one to which the rebilling rate does not apply has never complained.

It will be observed that the particular objection of the Meridian dealers is to the use by the Vicksburg dealers of expense bills for grain received over the Vicksburg, Shreveport & Pacific line within ninety days after their date, in other words, to what they choose to assert is an

abuse of the rebilling rate. Now it will be seen that the Commission did not forbid this alleged abuse, to which action the railway company would not have objected, but proceeded to require by order a domestic rate of 3½ cents, which, as shown beyond all question, involves an actual loss to the railway company on every carload.

There was certainly no flat rate of 3½ cents in force when the order was made, for otherwise there would have been no occasion for the order, and it is absurd to talk about that as a previously existing voluntary rate.

If, however, we concede that it was a voluntary rate, that by no means involves the proposition that when it became entirely unremunerative the railway company cannot abandon it. The company could readily abandon it by proper instructions to those in charge of its taffic department, but for the compulsory course taken by the Commission in requiring it to be put in force by an order to that effect. With that order in force they could not refuse compliance notwithstanding their determined opposition to the flat rate without incurring the statutory penalties mentioned in the bill. In other words, to abandon the unremunerative rate they were compelled to attack the order requiring it to be put in force. As before remarked, there is no question about the rate being unremunerative. The facts appearing in the record show this beyond question, and while defendants in error, as they say in their brief, replied to this, they did so not with facts showing the contrary, but with an argument based on a perversion of the evidence.

While the enforcement of the Commission's order would be injurious to the plaintiff in error, by enabling the Vicksburg dealers, who are not complaining, to require the grain reaching Vicksburg by the Yazoo & Mississippi Valley road should also be carried to Meri-

dian at 3½ cents, it could not by any possibility benefit the Meridian dealers, since the barge trade, unable to compete with the railroads, has been abandoned, and the all-rail interstate rate to Vicksburg from St. Louis, the chief grain-producing point, is the same on all the roads, that is to say, 12½ cents, which, in conjunction with this rate ordered, would be 15½ cents, while Meridian now has an all-rail interstate rate of 14 cents over the Mobile & Ohio and other lines reaching that city. The order would be of some advantage to the Vicksburg dealers, who are not asking for it, but, to use the rate it directs, the Meridian dealer would have to pay 1½ cents more than he now pays.

The record shows that the rebilling rate has been always open to the Meridian dealers and that they have to some extent made use of it. It further shows that if they would have a man at Vicksburg to do the reconsigning, they would have substantially the advantages that accrue from it to the Vicksburg dealer. One man at Vicksburg could do the reconsigning for all of the Meridian dealers and his compensation divided among them would be a most insignificant expense. They do not reflect that it also costs the Vicksburg dealers something to carry on their business. Nothing is better settled in this court than the right of a railway company to abandon an unreasonably low rate although it be a voluntary one. It has been distinctly held that what a railroad company may do or contract to do voluntarily, furnishes neither a criterion for the measurement of State authority nor for the reasonableness of the thing exacted by such authority.

Lake Shore, etc., v. R. C. Smith, 173 U. S., 697.

The case of the Pullman Co. v. Adams, 189 U. S., 420,

cited for defendant in error, has no application whatever to the question in hand. That case involve Section 3387, Code of 1892, imposing a privilege tax on sleeping car companies of $100 and 25 cents per mile for each mile of railroad track over which the company ran its cars in Mississppi, and it was contended that Section 195 of the State Constitution made sleeping car companies common carriers in Mississippi, compelling them by so doing to take local passengers from point to point within the State, and that inasmuch as the receipts from such local business exceeded the necessary expenses imputable to it, the loss had to come out of the profit derived from the interstate business, and that the joint effect of the constitutional provision and the statute was to burden the interstate business of the company. The whole case turned upon the question as to whether or not by the law of Mississippi the sleeping car company was compelled to take the local business, and, the Supreme Court of the State holding the negative, this Court adopted its interpretation of the State law. Is there anyone bold enough to say that the Alabama & Vicksburg Railway Company is free to refuse shipments of grain from Vicksburg to Meridian

The brief of defendant in error is discreetly silent as to the question raised on Sec. 4290, Code of Mississippi, 1892. The order in question is, by its terms as well as in fact and substance, one fixing a rate, and the constitutionality of the above section, which is the Commission's sole authority for fixing any rate, was plainly and distinctly brought in question. This section provides that all tariffs of charges, both domestic and interstate, shall be filed with the Commission and require that body in fixing domestic rates to take into consideration the entire business of the railroad and its earnings from all kinds

of traffic. This involves necessarily the fixing of domestic rates with reference to interstate as well as domestic business and earnings, and is violation of the Federal Constitution.

Smythe v. Ames, 169 U. S,. 466.
Northern Pac. Ry. Co. v. Keyes, *et al.*

Pertinent to this subject are the decisions of this Court in the cognate cases where taxes were sought to be collected of railroads on assessments based upon interstate as well as domestic business.

Western Union Tel. Co. v. Ala. State Board, 132 U. S., 472.
8 Federal Statutes (Annotated), p. 539.

The bill of complaint alleged that the interstate business and earnings of the plaintiff in error were taken into consideration by the Commission in fixing the rate, and the answer admitted that fact. The printed record erroneously shows a denial of this averment of the bill; the error of the record in this respect will be corrected, but it could avail nothing for the defendant to deny that it pursued the only method of fixing rates provided by law, and the order is equally void whether the Commission did or did not take into consideration the interstate business and earnings of the plaintiff in error.

Questions arising under the Constitution and laws of the United States, when properly presented in a record, cannot be disposed of by a State appellate court by the simple process of ignoring them. We know of no better presentation of the law of this subject than is to be found in the admirable work of one of the counsel for defendant in error, and we adopt his text as well as the authorities cited in support of it.

Taylor's Jurisdiction and Procedure U. S. Sup. Ct., pp. 442, 443, 444.

We also fully subscribe to what the same author says relative to the nature and office of the certificate of the presiding judge of a State appellate court as to the existence of Federal questions in the cause as presented in such court.

Ib., p. 451.

The case of Armstrong v. Athens County, 16 Peters, 281, is an unfortunate citation for the defendant in error, since it was there held that a certificate of this character made by the presiding judge and certified by the clerk as a part of the record will be presumed to have been made by authority of the court. How, in such case, can the certificate be properly denominated merely the personal views of the chief justice? The record, however, speaks for itself, and shows the Federal questions which cannot be justly evaded.

In order to put this Court in a position to see that Federal questions are necessarily involved in this record, we print, in connection with the foregoing, the following brief upon the merits.

Respectfully submitted,

HARRY H. HALL,

*Counsel for Alabama & Vicksburg Ry. Co.*

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1905.

No. 371.

ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL, Plaintiffs in Error,

v.

RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI, Defendant in Error.

No. 371.

## BRIEF OF PLAINTIFFS IN ERROR.

This suit originated in the Chancery Court of Hinds County, Mississippi, being one brought by the Alabama & Vicksburg Railway Company, hereinafter referred to as if sole plaintiff in error, to restrain by injunction the enforcement of the following order of the Railroad Commission of said State, made November 16, 1903:

> "That the Alabama & Vicksburg Railway Company is hereby ordered to put into effect over its line of road from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after December 8, 1903, a flat rate of 3½ cents per 100 pounds on grain and grain products, and no more."
>
> Record, p. 17.

The Federal questions raised by the bill of complaint and involved in the final decision of the case rest upon

the contention of the plaintiff in error that the rate is unreasonably low, and that the Commission cannot enforce an unremuerative rate without doing violence to the Fifth Amendment to the Federal Constitution, providing that private property shall not be taken for public use without just compensation, and the provisions of the Fourteenth Amendment to said Constitution, to the effect that no State shall deprive any citizen of its property except by due process of law, nor deny to any citizen the equal protection of the law; and that the order providing for said rate operates and was intended to operate as a burden upon or regulation of interstate commerce, and is therefore obnoxious to Clause 3 of Sec. 8 of Art. I of said Constitution, committing to Congress the regulation of interstate commerce.

On final hearing on the merits, in the Chancery Court, the injunction was dissolved and the bill of complaint dismissed, the chancellor setting out, in a written opinion shown by the record, his conclusions of law and fact. The plaintiff in error appealed to the State Supreme Court, and on the affirmance by that court of the final decree of the Chancery Court the writ of error herein was prosecuted.

Apart from the matters which gave rise to the Federal questions shown by the certificate of the Chief Justice of the State Supreme Court and the assignment of errors, the plaintiff in error attacked the order as violently discriminatory against it as a railroad corporation and in favor of the city of Meridian as a locality, and therefore contrary to the provisions of the State law found in Sec. 4291, Mississippi Code, 1892. It is, of course, recognized that the decision of the State courts is final as to this, and it is only mentioned to explain the presence of that part of the record not relating to the Federal questions involved.

The order of the Commission fixing the rate attacked was made in response to a petition of the Meridian Board of Trade, which was based on no stronger grounds than the location of the city of Vicksburg, one hundred and forty miles distant, on the Mississippi River, and the previous action of the Commission in fixing a rate of seven cents per hundred pounds on grain and grain products from Vicksburg to Laurel and Hattiesburg, both of which last-mentioned towns have railway connection with Vicksburg by the New Orleans & North Eastern Railroad via Meridian, and by the Gulf & Ship Island Railroad via Jackson, Mississippi. Whether or not the rate was a reasonable one was ignored in the petition, and seems to have been regarded as wholly unimportant by every authority that has considered the matter up to this time. The singularity of the reasons given by the Meridian dealers why the rate should be made is only equalled by their inconsistency with reference to the subject, for the record shows that when, a year previous—that is to say, in July, 1902—the Vicksburg dealers asked exactly the same thing at the hands of the Commission, they were met by the strenuous opposition of the Meridian dealers, who kept it up until the controversy was settled in the manner we willl proceed to relate.

The Alabama & Vicksburg Railway is an east and west line, one hundred and forty miles in length, extending from Vicksburg, on the west, to Meridian, on the east, and thus wholly within the State of Mississippi. At Vicksburg it connects with the Yazoo & Mississippi Valley Railroad, a part of the Illinois Central system, which runs north and south through the whole length of the State of Mississippi, and also with the eastern terminus of the Vicksburg, Shreveport & Pacific Railway, an associated line, which extends through Louis-

iana to Shreveport in that State, and has, at both Monroe and Shreveport, important connections with lines reaching the grain-producing country of the Northwest. At Meridian it connects with the Mobile & Ohio Railroad, and north and south line, which also reaches the grain-producing country of the Northwest, and with the northern terminus of the New Orleans & North Eastern Railroad extending from Meridian to New Orleans, and also with the western terminus of the Alabama Great Southern Railroad, which, at Birmingham, Alabama, connects with the Louisville & Nashville Railroad, which also reaches the grain-producing country of the Northwest.

Prior to July, 1902, when the dealers of Vicksburg and Meridian were at war before the Commission, and the plaintiff in error was caught between the upper and nether millstone, it had established a rebilling rate of 5 cents per hundred pounds, from Vicksburg to Meridian, on all grain and grain products reaching the former city over its own line or its associated line, that of the Vicksburg, Shreveport & Pacific Railway Company; and although it had previously put in force such rebilling rate of 3½ cents, from Vicksburg to Meridian, and had been compelled to abandon it and substitute the five-cent rate because the same had proved unremunerative, it agreed, at this time, in order to settle the matter, and, as its officers declare, under the menace of the Commission that otherwise a flat rate of 3½ cents would be ordered, to reduce the rebilling rate from 5 to 3½ cents per 100 pounds; and the rebilling rate on all grain and grain products reaching Vicksburg over its line or that of the Vicksburg, Shreveport & Pacific Company has remained at that figure ever since. The matter arising on the petition of the Vicksburg dealers, was thus disposed of before the Commission and with its full knowledge and

consent, and, at the time, entirely to the satisfaction of the Meridian dealers. Why the plaintiff in error preferred even the unremunerative rebilling rate of 3½ cents to the flat rate of 3½ cents which was being asked for and which it feared would be granted over the opposition of the Meridian dealers, is plainly shown by the record. It appears from the deposition of Mr. Harvey, the plaintiff in error's president, that while the plaintiff in error has an equipment of freight cars fully equal to the average, in consequence of the greater magnitude of its outbound business, involving cotton and lumber chiefly, its cars go and are detained beyond its line to such an extent as to make it an important matter to get the use of foreign cars, and also to get something in the way of a freight charge, however little, for empty cars required for outbound loading, and that this advantage makes the rebilling rate of 3½ cents less unbearable, though it remains a rate which yields no direct compensation. It is also fully shown that this advantage would not attend carriage from Vicksburg as a point of origin of shipment. (Record, p. 60.) Moreover, it appears that its trans-Mississippi connections allowed the plaintiff in error something, though not much, out of the charge for the haul to Vicksburg in order to make the 3½-cent rebilling rate somewhat less unprofitable. It is important to observe the nature of this rate, and the circumstances under which it was put in force, as well as its incidents, for the reason that it is contended, as will hereafter appear, that it is the same rate as that made by the order of the Commission for which justification is sought, on the theory that it was a rate voluntarily put in force by the plaintiff in error. Under a flat rate of 3½ cents, the plaintiff in error would be compelled to transport, at that figure, grain reaching Vicks-

burg by the Yazoo & Mississippi Valley line or down the river by barge, with Vicksburg as an original point of shipment, so far as its line is concerned, and would fail to obtain the control and benefit of the cars it would get by the rebilling arrangement, besides what it realized on the inbound trip of the cars and its participation in the charge for the haul to Vicksburg. It might be here remarked (although the fact, perhaps, belongs to a branch of the argument hereafter presented), that, while the rate attacked is disadvantageous and hurtful to the plaintiff in error, it is not possible for it to prove of any benefit to the Meridian dealers, and could only have been sought by them from some ulterior purpose. It is stated, in the opinion of the State Supreme Court, and conceded on all sides, that the authorized all-rail interstate rate on grain and grain products, in carload lots, from the chief market in the West to Vicksburg, is 12 cents, and to Meridian 14 cents. Since the low all-rail rate to Vicksburg has occasioned a practical abandonment of carriage by barge down the river, the Meridian dealers who now have an interstate rate to Meridian of 14 cents to avail of the rate attacked would have to pay 12 cents to Vicksburg and 3½ cents from there to Meridian, making a total of 15½ cents. Clearly they do not desire a change from 14 cents to 15½ cents, and we think that there can be no doubt that their real purpose, as charged in the bill of complaint and substantially avowed by their counsel, on the hearing before the Commission, was to beat down the interstate rate on the Mobile & Ohio Railroad, the plaintiff in error, being used as a club for that purpose.

With this preliminary statement as to the nature of the case, we will proceed to the consideration of the several assignments of error, first, setting out Sec. 4290,

Code 1892, which is the source of all of the power of the Railroad Commission in respect to the regulation of rates:

"4290. Tariffs Submitted; Commission to Fix Rates.—It is the duty of every railroad to furnish to the Commission its tariff of charges for transporting passengers and freight from point to point within, and from points without to points within, and from points within to points without the State, and including all joint tariffs with connecting lines; and the Commission shall revise such of said tariffs as are not subject to the exclusive regulation of Congress, and determine whether or not, and in what particular, any of the charges are more than reasonable compensation for the service to be rendered, and whether or not discrimination be made improperly against any person, corporation, or locality; and it shall require the proper corrections to be made; and, when the tariffs have been corrected, the Commission shall append to each its certificate of approval; and the Commission shall fix and regulate tariffs of charges for all railroads which fail to furnish their tariffs as required. In revising, fixing, and regulating charges for transportation, *the Commission shall take into consideration the character and nature of the service to be rendered and the entire business of the railroad and its earnings from all kinds of traffic, and shall so revise, fix and regulate the charges as to allow reasonable compensation for the service to be rendered.* It shall exercise a watchful and careful supervision over the tariffs of charges of every railroad, and shall revise the same, from time to time, *as justice to the public and the railroad may require, and shall increase or reduce any of the rates as experience and business operations show to be just.* In fixing joint tariffs of rates for connecting lines the Commission shall determine the proportion to be charged by each of the railroads. The Commission shall regulate and fix the rates to be

charged on short hauls in excess of what may be charged on long hauls; and it shall determine in all cases whether the circumstances and conditions be or be not substantially similar."

**First Assignment of Error.**

This assignment is a general one predicated on the affirmance of the decree of the Chancery Court, the special grounds of error being discussed in those which follow it.

**Second Assignment of Error.**

This assignment of error is predicated on the fact that *the rate is unreasonably low.* If the effect of the order is to make the rate a strictly intrastate or domestic one, it should be considered with reference to the tariff fixed by the Commission for transportation of commodities, from point to point, on the line of the plaintiff in error. The statute requires that in regulating the tariff of charges of all railroads, the Commission shall consider the nature of the service rendered and allow reasonable compensation for the same. We assume that the Commission did its duty in the revision of the plaintiff in error's schedule for charges, from point to point, on its own line, yet it is shown by the record that no such low rate prevails on the same or any other commodity for the same distance (Record, 45, 46, 63, 64, 65); that no such low rate prevails on any other commodity for the short distance of five miles or less, on any other commodity except brick, sawdust, lumber, fertilizer, and cordwood, which, by reason of their nature, always bear exceptionally low rates, and that even as to these com-

modities the rates are considerably higher for less than one-half of the distance Vicksburg to Meridian (Record, p. 45); that, on no other line in this State or elsewhere, does any such low rate prevail on the same commodity for the same distance (Record, p. 45); that it is lower than the rate on native-grown corn (Record, p. 26), for the cheap transportation of which the Commission is expressly directed by statute to exercise its power (Code 1892, §4332); that it is lower than the rate on lines which have to compete with carriage by water, which affords the lowest known rate (Record, p. 45), and, to crown all, that transportation at such a rate will result in actual loss to the plaintiff in error on every carload.

It will be noticed that the chancellor found, as a matter of fact, on the testimony of Mr. Harvey, president, that the rate could not be put in force by the railway company without actual loss on each shipment. He says, in his opinion, that this fact is shown by the testimony. (Record, p. 96.) No other conclusion could have been reached on the evidence. The witness based his calculations on the earnings and expenses, per freight train load, and estimated the cost on a freight train load of 362 tons, from Vicksburg to Jackson, and 380 tons from Jackson to Meridian, the nature of the grades necessitating a less load from Vicksburg to Jackson, than for the balance of the haul, both of which statements of tonnage, it will be observed, largely exceed the average train load of 239.09 tons. He might well have based his calculation on the smaller tonnage of freight trains from Vicksburg to Jackson, which would have been more favorable to his contention, since no train going from Vicksburg to Meridian could transport to Meridian any load that it could not carry to Jackson, but he took the

smaller tonnage, from Jackson to Meridian, into consideration and ascertained the tonnage for the whole distance by apportionment. The distance of Jackson from Vicksburg being about one-third of the 140 miles to Meridian, he deducted from the 380 tons 6 tons, or one-third of the 18 tons constituting the difference between the 380 tons from Jackson to Meridian and the 362 tons from Vicksburg to Jackson, leaving 374 tons, which, at 3½ cents per hundred pounds, or 70 cents per ton, gives his figure of $261.80 per train load, which is less by $42.84 than the cost of hauling any loaded freight train for that distance. (Record, p. 98.) This estimate took into consideration neither the cost of returning empty cars nor fixed charges. (Record, pp. 28, 29.)

It has been often held that mathematical certainty is not required to establish a fact like the one under consideration, but we submit that in this case Mr. Harvey's testimony amounts to mathematical demonstration.

His testimony does not stand alone, however. A number of persons connected with the traffic departments of other railroads, persons whose testimony shows that they are entitled to be classed as experts, declare, with equal clearness, that the rate could not be put in force without actual loss. See the testimony of Messrs. **Green, Compton, Cameron** and **Miller.** (Record, pp. 63, 64, 65.) That the testimony of experts is valuable in this connection is well settled. On this subject the Supreme Court of the United States has held that:

> "The opinion of experts, familiar with railroad business, is competent testimony and cannot be disregarded."
>
> Minneapolis, etc., R. Co. v. Tompkins, 176 U. S., 167.

It is very plain that carriage of grain by barge to Vicksburg is a thing of the past, a late decision of the Interstate Commerce Commission showing, apart from the evidence in this case, that not one-twenty-fifth of the grain reaching that city comes by water. (10 Int. Com. Rep., 297.)

But if we assume that the grain to which the 3½ cent rate is applicable, were such as reached Vicksburg by barge, we find that the cost of switching up and down the steep incline at Vicksburg, would be about $3.00 per car, which would reduce the 3½ cent rate about one-fourth (Record, p. 31).

The answers made to this proposition that the rate is below cost of carriage are quite remarkable. One, which the State Supreme Court seems to have adopted, was that trains are not made up wholly of cars loaded with grain, but include as well other cars loaded with commodities bearing a higher charge for transportation. This would make the charges on other commodities which, because of their nature, and liability to damage, etc., have by the Commission properly been fixed at a higher rate, bear the loss which the plaintiff in error would sustain in the transportation of grain. Only the rate on grain was under consideration, and the higher rate allowed on other commodities does not make the rate on grain any higher. The only way of determining whether the rate on grain is remunerative, or not, is to take the case of a trainload of that commodity. By the process of reasoning on which the appellee advances this contention it would be equally proper to require grain to be carried for nothing because other freights carried by the same train gave reasonable returns. Another answer was that this business, which could only be done at a loss, *would so increase in volume as to become profitable.*

A railroad commission has no power to fix any charge that is unreasonable and does not afford proper compensation to the carrier. Under the pretense of regulating fares and freights, no State can require a railroad company to carry persons or property without reward; neither can it do that which amounts to a taking of private property for public use, without just compensation or without due process of law.

Railroad Commission cases, 116 U. S., 329, 331.
Chicago, etc., Ry. Co. v. Dye, 35 Fed. Rep., 866.
Clyde v. Richmond, etc., R. R. Co., 57 Ib., 436.
Southern, etc., Ry. Co. v. Board, etc., 78 Ib., 236.
Pensacola, etc., R. Co. v. State, 25 Fla., 310.
Storrs v. Pensacola, etc., R. Co., 29 Fla., 617.
Chicago, etc., Ry. Co. v. Minnesota, 134 U. S., 418.
Chicago, etc., R. R. Co. v. Railroad Commission, 42 Am. & Eng. R. R. Cas., 285.
Chicago, etc., Ry. Co. v. Becker, 32 Fed. Rep., 849.

And the reasonableness of the charge is always a question for the courts.

Chicago, etc., Co. v. Minnesota, 134 U. S., 418.
Chicago, etc., R. R. Co. v. Railroad Commission, 42 Am. & Eng. R. R. Cas., 285.
Reagan v. Farmers Loan & Trust Co., 154 U. S., 367.
Smythe v. Ames, 169 U. S., 466.

As to the elements of proof that may be considered in determining the reasonableness or unreasonableness of a rate we beg to cite the following:

Nor. Pac. Ry. Co. v. Keyes, 91 Fed. Rep., 47.
Smythe v. Ames, 169 U. S., 466.
Interstate Com. Commission v. Southern Ry. Co., 117 Fed. Rep., 741.

No warrant can be found in the State law for this unreasonable rate, and, being entirely outside of the law, it is an attempt to deprive the plaintff in error of its property without due process of law, as well as to take its property for public use without just compensation. Certainly the Commission did not, as required by the Statute, consider the nature of the service to be rendered and allow a reasonable compensation for the same. The Supreme Court of Mississippi has decided that a telegraph company which is a common carrier, under Section 195 of the Constitution of 1890, cannot be compelled to do business at a loss, refusing to maintain a suit brought by the Railroad Commission to recover a statutory penalty for the discontinuance of an office at a certain point without the consent of the Commission, on the contention of the company that the receipts of the office were insufficient to pay the expenses of keeping it open for business.

W. U. Tel. Co. v. Railroad Commission, 74 Miss. 80.

It seems that a telegraph company could not be compelled to do business at a particular point at a loss, whether its interstate business as a whole yielded a profit, or not, and we can see no reason why the same principle does not apply in favor of railroads as to a particular rate.

The 3½ cent flat rate is defended on the ground that it is a voluntary one, which assumes that it is the same as the rebilling rate of 3½ cents, notwithstanding the fact that the advantages attending the rebilling rate as agreed upon and put in force do not attend the flat rate as hereinbefore pointed out. The fact of a change being desired on the one part and opposed on the other, the

controversy itself, shows that the rates are not identical. Moreover, it is shown that even the rebilling rate was put in force in July, 1902, under the menace of a flat rate by the Commission. In the opinion of the State Supreme Court what is denominated an "intimation" of such coercion by the Commission is rebuked as an unwarranted aspersion of that body, but it will be observed that the matter, while not greatly relied on, is not one of mere intimation, but is plainly charged in the testimony of the two highly respectable witnesses (R., 27-46-47). The court must have overlooked the fact that the matter was pertinent to the subject of inquiry and that it was in no way contradicted by the Commission which is merely a subordinate administrative agency of the State government and by no means infallible nor exempt from criticism. Perhaps the court would not have shown so much heat on this subject had it been aware, as appears from a report of the Commission, that it regarded the exercise of the power of taxation by increasing the assessment of railroad property, as a legitimate method of enforcing a reduction of rates (Biennial report for the two years ending June 30, 1899, p. 7).

We do not consider it necessary, however, to discuss the question of whether, or not, the rate was a voluntary one. If it is an unreasonable rate and the plaintiff in error objects, it should not be enforced. This court has declared that

> "What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature."

Lake Shore, etc., R. Co. v. Smith, 173 U. S., 697.

While the Chancellor found that the rate could only be observed at a loss to the plaintiff in error, he held that such fact was immaterial, on the ground that if the plaintiff in error realized any profit on its whole business, however small, the Commission could require that particular commodities be transported at less than the cost of carriage.

He based his view of the law of this question on two cases, for the case decided by the Supreme Court of Minnesota reported in 89 Am. St. Reports is the same case which was decided on appeal to the Supreme Court of the United States and reported under the title of Minneapolis, etc., R. Co. v. Minnesota Railroad and Warehouse Commission, in 186 U. S., 257. The other case cited is that of Pensacola, etc., R. Co. v. State, 25 Florida, 310, also reported in 5 South. Rep., 833.

As to the Florida case the court will observe that the subject received but scant consideration, only a very few lines being devoted to it near the end of a long, rambling opinion on other subjects in which the author, before reaching this one, makes use of the following language:

> "We have found no case which holds that a railroad company can be compelled to carry at unremunerative rates" (5 South., p. 842).

The court was there considering a suit to recover a penalty for charging a greater fare to a passenger than was allowed by the Statute regulating the subject, and was by no means considering a freight rate fixed by a commission at a figure that involved actual loss to the railroad company. There was presented to the court no such question as that arising upon the language of the Mississippi Statute, which requires all charges to be reasonable and to be fixed with reference to the character

and nature of the service rendered in hauling the particular article. If we give to this case the effect claimed for it, the decision becomes an eccentric one against reason and the weight of authority.

The Minnesota case reported in 186 U. S., 257, does not support the conclusion of the chancellor. In that case there was a failure of proof, the court employing the following language in reference thereto:

> "This rate, fixed by the Commission only upon hard coal in carload lots, was not met by any showing that at the rates fixed by the Commission there would be no profit or an insufficient profit upon the coal so transported." * * *
>
> "The difficulty with the defendant's case is that it made no attempt to show the cost of carrying coal in carload lots." 186 U. S., 265-266.

There were two objections made to the evidence in the Minnesota case. One was that it was confined to an attempt to prove that if the rate on coal were applied to all freight the road would not pay its operating expenses. The propriety of this the court thought was at least doubtful. The other objection was that in the operating expenses were included interest upon the bonded debt of the road and dividends, which the court thought plainly improper (Ib. 266). The court declared, too, that the evidence showed the rate fixed for coal was above the average rate, although coal was classified as far below the average (Ib. 266). In connection with its rulings on these objections the court said:

> "We do not intend, however, to intimate that the road is not entitled to something more than operating expenses." Ib. 266.

None of the above objections are applicable to the

evidence in this case. In this case there was an attempt and a successful attempt to show the cost of carriage, and the showing that it exceeded the compensation allowed under the proposed rate only took into consideration the actual expenses of operation (Record, 28-29). It is, moreover, quite evident that the court in the case mentioned was not in the least degree considering the case of a rate below cost of carriage, but merely a rate alleged to be and not proved to be unreasonably low when compared with rates on other freights.

It is true that Mr. Justice Brown said in the case:

> "It sometimes happens that, for purposes of ultimate profit and of building up a future trade railways carry both freight and passengers at a positive loss." Ib., 268.

But it will be seen that he immediately proceeds to say:

> "It may not be within the power of the Commission to compel such a tariff * * *." Ib., 268.

It is evident that the learned judge had in mind another decision which proceeded from the bench on which he sat, to the effect that the "voluntary" action of a carrier in fixing a low rate is no criterion of the power of a State commission to compel it.

> Lake Shore, etc., R. Co. v. Smith, 173 U. S., 684.

We deny that there is an instance where any court has gone so far as to hold that a State or any of its instrumentalities has the power and authority to require a railroad to transport any person or article below cost. The chan-

cellor's decision is in the teeth of an opinion by Mr. Justice Brewer wherein it was held that—

> "State Railroad Commissioners cannot enforce a schedule of rates for switching cars in a city which fixes the compensation at less than the actual cost to the railroad company for the work."
> Chicago, etc., R. Co. v. Becker, 35 Fed. Rep., 883.

Similarly, it has been held that it was a denial of the equal protection of the law for a State to require a railroad company to accept less than its ordinary remuneration on certain traffic, although there might have been a profit in it, the court deciding that it was unconstitutional to select one class of passengers or a class of traffic arbitrarily and prevent the railroad companies from receiving the ordinary compensation which they collected from the rest of the public and from other classes of traffic.

> Lake Shore, etc., R. Co. v. Smith, 173 U. S., 684.

So, also, a State law prescribing local freight rates on railroads which reduces such rates 29½ per cent. is invalid where the rates prescribed are such as to companies operating roads within the State and doing an interstate business that there would be no net earnings from transportation of freight if such rates were applied to all of the business.

> Ames v. Union Pac. Ry. (C. C.), 64 Fed. Rep., 165.

In its opinion in this case the court said:

> "If it would be unreasonable to reduce the total earnings of these roads 29½ per cent., it is *prima*

*facie*, at least, equally unreasonable to so reduce any single fractional part of such earnings." Ib., 188.

If a reduction below cost were made on all freights there could be no profit on either domestic or interstate business. The testimony in this case shows that a reduction of the same percentage on all the business would leave an immense deficit in revenue. R. 48.

The reduction of the rate on a single commodity to a figure below cost of carriage involves the same principle as an unreasonable reduction of the schedule as a whole, and we again refer the court to the leading case of Smythe v. Ames, 169 U. S., 466, and cite the following as along the same line of decision:

Nor. Pac. R. Co. v. Keyes, 91 Fed. Rep., 47.
South Pac. R. Co. v. Railroad Com., 78 Ib., 236.
Metropolitan Trust Co. v. Houston, etc., R. Co., 90 Ib., 683.
Cinn. etc., R. Co. v. Dey, 35 Ib., 866.
St. Louis, etc., R. Co. v. Gill, 156 U. S., 649.
Reagan v. Farmers Loan & Trust Co., 154 U. S., 362.

The chancellor did not in his opinion express any finding as to the extent of the profit derived by the company from its whole business, but merely found that it derived a profit therefrom, and based his conclusion on the fact of a profit, whether large or small. This is certainly against authority. So. Pac. R. Co. v. Commers, 78 Fed., 261.

We refer especially to the opinion of the chancellor because the affirming opinion of the State Supreme Court wholly ignores the question of the unreasonableness of the 3½ cents flat rate, referring to that of the rebilling rate, which is not involved, only to say that it would not pass on the question.

## The Third Assignment of Error.

This assignment calls the order of the Commission in question as a burden upon and regulation of interstate commerce. When we consider the fact that in no way can the grain dealers of Meridian avail of the rate to their profit, it is impossible to escape the conclusion that the declaration of their attorney before the Commission disclosed the real purpose of the application, and that the rate was desired merely as a scarecrow to frighten the Mobile & Ohio Railroad Company into complying with their wishes in respect to interstate rates. So much for the object of the rate. If it is availed of it must necessarily affect interstate commerce, and the order putting it in force is one to regulate interstate commerce. We submit that the record shows quite clearly that the plaintiff derives no net revenue from its intrastate or domestic business, and therefore any further diminution of its revenue must come out of the earnings derived from its interstate business. This fact is one not susceptible of mathematical demonstration, for the reason that it is impossible to apportion precisely between local and interstate shipments the expenses of a train upon which both are carried, but the evidence will be found to show very satisfactorily that no net profit accrues from the domestic business.

Record, 30.

The State Supreme Court disregarded this fact because, as it says, the same was reached by "estimation," although it decided at the same term that the damages sustained through the destruction of growing crops might be reached by "estimation," because it was impossible otherwise to prove the same.

85 Miss.; S. C., 37 South Rep., 1011.

It should be borne in mind that the order enjoined provides for a flat rate of 3½ cents on all grain and grain products shipped from Vicksburg to Meridian, regardless of whether such shipments are the subject of interstate commerce or not. It is well established whether an article is still the subject of interstate commerce after reaching one point in a State and before its carriage to another point therein depends upon whether or not it is at rest at the first point for an indefinite period.

Kelly v. Rhoads, 188 U. S., 1.
Diamond Match Co. v. Ontonagon, 188 U. S., 82, 93, 94, 95, 96.
Pittsburg, etc., Co. v. Bates, 156 U. S., 577.

As the order of the Commission embraces all shipments of grain from Vicksburg to Meridian, its effect not being limited to grain originating in Vicksburg, it necessarily applies equally to interstate shipments. Some, if not all of the grain shipped out on the local rate in question would be the subject of interstate commerce.

Under the order there is no reason why a Meridian dealer may not require that a carload of corn received from the Northwest over any of the railroads entering Vicksburg be at once carried forward to Meridian on the local rate of 3½ cents while it still remains the subject of interstate commerce. So, also, he might have a barge load of Northwestern corn on arrival at Vicksburg, where it was never intended to rest for an indefinite period, at once loaded upon A. & V. cars and carried to Meridian on the local rate of 3½ cents, although the corn never ceased to be the subject of interstate commerce.

It is not only true that this could be done, but it is manifestly what the Meridian dealers propose to do, if

indeed their whole proceeding resulting in the order of the Commission be not a mere feint to startle the Mobile & Ohio Railroad Company. This is shown by several undisputed facts. One of these is that Vicksburg is not itself a grain-producing point, all of the grain reaching that city being brought from other States; another is that they concede that they would enjoy every advantage of the rebilling rate that the Vicksburg dealers do if they kept warehouses and employes in that city (Record, 79-81), which they by no means propose to do. As they cannot use freight cars or barges as warehouses, they can only contemplate prompt forwarding of the grain from Vicksburg to its destination at Meridian, and grain so handled never ceases to be the subject of interstate commerce. The opinion of the State Supreme Court seems to recognize that with warehouses and employes to do the reconsigning at Vicksburg, the Meridian dealers would have had all the advantages enjoyed by the Vicksburg dealers, but that the procurement of these facilities would subject the Meridian dealer to too great stress and he should be allowed to forward his interstate shipments from Vicksburg to Meridian on the local rate without any change in its character as the subject of interstate commerce. It is thus seen that a rebilling interstate rate has been displaced by quite a different local rate which it is proposed shall be operated as the same interstate rebilling rate divested of all the advantages that induced the appellant to assent to it as a rebilling rate in 1902.

It is clear that the order affects interstate commerce and transcends the power of the Commission.

The nature of the Commission's order as a regulation of interstate commerce will be further considered when the fifth assignment of error is taken up.

## The Fourth Assignment of Error.

This assignment of error is predicated on the view that the order operates as a denial of the equal protection of the law to the plaintiff in error, because no such low rate has ever been ordered or enforced by the Commission on the same or any other commodity for a like distance on any of the other numerous railroads operating in the State. The rate, if not to be treated as one regulating interstate commerce, is a local rate, and as appears from the certificate of the secretary of the Commission which was used as evidence at the hearing without objection, no such low intrastate rate prevails on any other line. (Record, 65, 66.) There is nothing in the record to controvert the charge that the rate is unreasonably low, and no justification is offered for singling out the plaintiff in error for an application of the theory that a railroad can be compelled to transport goods wholly without remuneration. Why this preferential and unjust rate should have been granted to Meridian is beyond comprehension when we observe that that city already enjoyed an interstate rate from the grain-producing region that was far more advantageous than those of other cities in the same section. The bulk of the grain is shown to be shipped from St. Louis, and the all-rail rate from there to Meridian, 505 miles, is 14 cents; and from St. Louis to Birmingham, 642 miles, 25 cents; and from St. Louis to Chattanooga, 484 miles, 24 cents per hundred pounds. (Record.)

## The Fifth Assignment of Error.

Under this assignment of error the nature of the order of the Commission establishing the rate in question

again comes up for consideration as a regulation of interstate commerce.

Section 4290 of the Code is the source of the Commission's power to fix and regulate rates, and it requires the railroads to furnish to the Commission their tariff of interstate as well as domestic charges, and requires the Commission in fixing and regulating domestic charges to "take into consideration the entire business of the railroad and its earnings from all kinds of traffic."

The words "entire business of the railroad" include, of course, its interstate business, and its earnings from all kinds of traffic embrace its earnings from interstate traffic.

In the case of Nor. Pac. Ry. Co. v. Keyes, supra, it was held that in fixing a local rate the whole business of a railroad, both interstate and domestic, could not be considered, and it is settled by this that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from that business.

> Smythe v. Ames, 169 U. S., 466; vide also Chicago, etc., R. Co. v. Osborne, 53 Fed., 914.

Exactly what this Court says cannot be done, Section 4290 of the Code requires the Commission to do in fixing rates. Its conclusion as to the reasonableness or unreasonableness of a domestic rate must be based upon a consideration of the entire business of the railroad and of its earnings from interstate as well as domestic traffic. This direction of the statute is mandatory, and so enters into the method of regulation and is so connected with the other unobjectionable provisions of the statute on

the subject as not to be severable from them, and the whole statute is, therefore, void, because this part of it provides for the regulation of interstate commerce by state authority.

It cannot be claimed, with any show of reason, that the objectionable feature of the statute in question is severable from its other provisions. The statute, it is true, provides for the fixing of reasonable rates, but this reasonableness is to be ascertained on a basis which includes interstate business and interstate earnings. Nor does the provision near the beginning of the section that the Commission shall revise such of said tariffs furnished by the railroads as are not subject to the exclusive regulation of Congress, etc., at all help the case, for it is in the revision of domestc rates that it is provided the Commission shall proceed on the basis of interstate as well as domestic business and earnings.

Section 4290 must stand or fall as a whole, the provision regulating how charges shall be regulated being mandatory and not susceptible of severance or elimination by contruction.

17 Am. & Eng. Ency. L. (2nd ed.), 76.
Louisville, etc., R. Co. v. R. R. Com., 19 Fed. Rep., 679, 713.
S. C. 16 Am. & Eng. Railroad Cases, 1, 38.
State v. Indiana, etc., Co., 120 Ind., 575.
United States v. Reese, 92 U. S., 221.
Trade Mark Cases, 100 U. S., 82.
Baldwin v. Frank, 120 U. S., 678, 686.
Ballard v. Oil Co., 81 Miss., 507, 573.

This view of the law will doubtless be objected to by the defendant because it would thereby be shorn to a large extent of its power. It could still supervise the manner in which railroad companies operate their trains

and provide depot accommodations, could still determine the assessment of railroad property and exercise other powers confided to it; but the question of the constitutionality of the statute cannot be affected by such a consideration no matter to what degree the Commission may be deprived of power by a declaration against its constitutionality, for no unconstitutional enactment can confer power and there would be nothing extraordinary in the result.

The State Supreme Court declined to consider the question, holding that no rate was made by the order of the Commission; that the rebilling rate was the only one to be considered, and that that rate was voluntarily established by the plaintiff in error, no order of the Commission ever having been made in reference thereto. We have no fear that this Court will so view the matter after an examination of the record, for no adjudication of a State court which in its misconception of a case is equivalent to saying that white is black will be followed here. This Court in all cases where it is claimed that some State law impairs the obligation reserves to itself the right to determine whether or not a contract exists regardless of the decison of the State court, and we submit that it is just as important and just as legitimate an exercise of jurisdiction for it to disregard a decision of a State court which shows total misconception of the case under consideration. The rebilling rate stands absolutely unassailed, and this flat rate which is involved in the controversy is essentially different from it and has been opposed at every step from the time application therefor was made to the Commission until now. The Commission confessedly had made no rate prior to the passage of the order in question, and if it did not establish a rate by that order the plain words of the order have a signification that has never been given to them heretofore.

The chancellor did not apparently question the binding authority of the decisions in Smythe v. Ames and Nor. Pac. R. Co. v. Keyes, supra, on this head, but brushed them aside upon a misconception of the case before him, declining to pass upon the constitutionality of the statute.

He says, in his opinion, that the answer of the Commission shows that they did not consider the interstate earnings, and, there being nothing to disprove their assertion, it must be accepted as true. (Record, p. 123.) We quote from the answer as follows:

> "VII. Responding to paragraph ten of the complaint, respondent says that in fixing the rate complained of it did take into consideration the entire business of the complainant railroad and its earnings from all kinds of traffic, but respondent affirms that the local rate on grain and grain products was fixed in and by the order complained of unaffected by any influence thereon by interstate traffic, and that in fixing said rate the law was strictly observed as this Commission was advised and believed; the Commission denies that Section 4290, of the Code of 1892, of this State is unconstitutional and void, nevertheless, say the Commission, even though it be the order herein complained of was heard entirely thereon, but made as above stated, and said order is not void because in conflict with clause 3, Sec. 8, Art. 1, of the Constitution of the United States." (Record, p. 33.)

It will be observed that the answer states that the law was strictly followed and that the Commission did take into consideration the whole business of the railroad and its earnings from all kinds of traffic, including necessarily the interstate business and earnings. No weight can be attached to the added statement that while the

Commission improperly considered the interstate business and earnings of the company they were not influenced thereby in fixing the rate in question. That is on a par with the declaration of a juror after verdict that incompetent evidence allowed to go to the jury did not affect his verdict, and should receive as scant respect.

The State Supreme Court seemed to regard the matter as merely one of discrimination, and as having nothing to do with rate-making, and referred its conclusion to a section of the Code of 1892, which we quote, as follows:

> "4297. Complaints of Schedules and Tariffs; What to Contain; Notice; Hearing and Determination.—The Commission shall docket, hear and determine all complaints made of any time schedule, or of the tariff of rates, joint or several, made by any railroad, or fixed or approved by the Commission on the ground that the same, in any respect, is, in the case of a time schedule, unnecessarily inconvenient for the public, or, in the case of a tariff of rates, that the charges are for more than just compensation, or that such charges, or any of them, amount to, or operate so as to effect unjust discrimination. The complaint must be in writing, and specify the grounds of complaint or the items in the tariff against which complaint is made; and if it appear to the Commission that the matter ought to be investigated, the Commission shall forthwith furnish to the railroad a copy of the complaint, together with notice of the time and place of hearing; and at the time and place named, the Commission shall hear the parties to the controvery, in person or by counsel, or both, and such evidence as may be offered, oral or in writing, and may examine witnesses on oath, conforming the mode of proceedings, as nearly as may be convenient, to that pursued by arbitrators, giving such time and latitude to each side, and regulating the opening and closing of any argument as

> the Commission may consider best adapted to arrive at the truth; and when the hearing is concluded, the Commission shall give notice of any change deemed proper by it to be made to the railroad, and require compliance with its order."

We insist that if the English language is an adequate vehicle for the communication of thought, that the order of the Commission is one which fixes a rate, and deny with equal earnestness that the rebilling rate in any wise discriminated against the Meridian dealers. Certainly no flat rate of 3½ cents per hundred weight was in force prior to the making of the order. In point of fact, apart from the making of a local rate, the State Commission was without authority in the premises, for the rebilling rate was an interstate one and the correction of any discriminatory feature in its operation was confined to the Interstate Commerce Commission. The State Commission did not assume to do anything except make a domestic rate from Vicksburg to Meridian, and why the validity of that rate may not now be inquired into passes conjecture.

The crumpled rose leaf of which Meridian's mercantile sybarites complain is that the Vicksburg dealers have made use of a rebilling rate equally open to themselves. They were forced to acknowledge that this rate was open to them and that they were using it, but to what extent they were evidently unwilling to divulge, some of them saying curtly that they did not know or did not remember and one declined to say because he would have to refer to his books to see. Being cornered as to this, they shift their sails, and say that it is not the rebilling rate itself that operates against them, but the fact that the Alabama & Vicksburg R'y Co. allows the rebilling rate on all grain for which expense

bills are shown, and that the Vicksburg dealers who have accumulated expense bills ship out from their warehouses grain that did not reach Vicksburg over the Alabama & Vicksburg or the Vicksburg, Shreveport & Pacific lines. If this use of expense bills was really the objection, why could not the Commission have simply stopped that practice. The plaintiff in error would have willingly complied with such an order had the Commission made it. An expense bill is in substance a receipt given by a railroad company for freight charges paid, and it is shown that the Alabama & Vicksburg Co. only gives the rebilling rate where the expense bills are for so much grain that has come over its line or that of the Vicksburg, Shreveport & Pacific. A Vicksburg dealer cannot any more than a Meridian dealer get the rebilling rate on an expense bill of the Yazoo & Mississippi Valley road, but when he presents an Alabama & Vicksburg or Vicksburg, Shreveport & Pacific expense bill he can get the rebilling rate for that much grain, no matter that it is not the identical grain which came on the expense bill, and may, in fact, have come over the Yazoo & Mississippi Valley road. This results from the fact that after the grain is put into the warehouse at Vicksburg the Alabama & Vicksburg Co. cannot possibly tell how it came to Vicksburg, and the Vicksburg dealer might not himself know. But the result is the same, for no more grain is shipped out by the Vicksburg dealer over the Alabama & Vicksburg Ry. at the rebilling rate on expense bills than he received by that line or the Vicksburg, Shreveport & Pacific.

The record shows that on all expense bills of the Alabama & Vicksburg and Vicksburg, Shreveport & Pacific roads the Meridian dealers can get, and have been getting, the rebilling rate, and that, like the Vicksburg deal-

ers, they can even use such expense bills to get the rebilling rate on grain which was not the identical grain on which the expense was incurred but other grain substituted for it. The fact is that the advantage of which they complain results to Vicksburg dealers from their maintaining warehouses and employes in Vicksburg, where grain, as well as expense bills, is accumulated, and the testimony of the defendant's own witnesses plainly shows this. The Vicksburg dealer, with grain in his warehouse, can make quicker delivery on orders than the dealer in St. Louis or the Meridian man who orders from St. Louis direct to his customer. If the Meridian man had to bear the expense of maintaining a warehouse and employes in Vicksburg he would perhaps change his mind as to the advantage of the dealer in that city, but he cannot be heard to complain that he has not those advantages which result to another from his having gone to the expense of securing them. This is the doctrine of the State Supreme Court in a recent demurrage case where the court held that a railroad was under no duty to put those without warehouses on an equal footing with those who had them, and that no one had the right to use freight cars for warehouse purposes free of charge.

Railroad Co. v. George, 82 Miss., 710.

All this may be said without reference to the advantages enjoyed by Vicksburg dealers by reason of their location on the Mississippi River. No court can legally deprive them of that advantage or such as may result from their having provided superior facilities for carrying on their business.

We deny most emphatically on the record in this case that the manner in which the rebilling rate was operated

is subject to condemnation as discriminatory. Against whom did it discriminate, and in what way? Surely this Court will not condemn it as discriminating against the Yazoo & Mississippi Valley, while that company is not complaining anywhere, and if it did complain, would have to do so before the Interstate Commerce Commission. No shipper was affected by the restriction of the rebilling rate to grain reaching Vicksburg over the Vicksburg, Shreveport & Pacific or Alabama & Vicksburg, for the reason that Vicksburg is not a grain-producing point and the interstate rate from St. Louis, the producing point from which comes nearly all the grain that reaches Vicksburg, was the same (12 cents per hundredweight) on all roads. Nor does the fact that the appellant was allowed a portion of the interstate rate of 12 cents to Vicksburg add anything whatever to the expense of the shipper, but simply reduces the compensation of the other roads participating in the interstate rate, which burden they were willing to bear to make the position of the appellant somewhat less intolerable.

The Vicksburg dealers are not complaining, but, on the contrary, are said to be the beneficiaries of the discriminatory conduct, and the Meridian dealers alone are treated as injured by it. We deny as a matter of fact on the record that they are in even the slightest degree affected, and insist that the Court has been misled by a mere pretense and sham.

We do not deem it necessary to discuss the threadbare proposition that grain can be brought to Vicksburg by barge at a lower rate than by rail. The Vicksburg dealers who are as much interested as any could be in getting cheap transportation to that city have abandoned that method in favor of transportation by rail.

## The Sixth Assignment of Error.

This assignment is based on the contention of the plaintiff in error that, if it be true, as decided by the chancellor, that the Commission in fixing the rate in question did not consider the entire business of the railroad and its earnings from all kinds of traffic, as required by Section 4290 of the Code of 1892, it fixed the said rate entirely outside of the law, for Section 4290, which is the sole source of its authority for the revision and regulation of railway charges, provides that in fixing the same the Commission shall take into consideration the entire business of the railroad and its earnings from all kinds of traffic. In other words, the Commission had no power except such as was given it by statute, and if it exercised in fixing this rate a power conferred upon it by statute, its action must be taken as depriving the plaintiff in error of its property without due process of law. The defendant in error must necessarily hang upon one or the other horns of the dilemma in which it has placed itself. We think that the said answer must be taken as admitting that the interstate business and earnings of the plaintiff in error were considered in fixing the rate, but it is entirely clear that if such be not the fact that the Commission failed to comply with the only provision of the law empowering it to act in the matter.

Respectfully submitted,

HARRY H. HALL,

*Counsel for Ala. & Vicksburg Ry. Co.*

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SUPREME COURT U. S.
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JAMES H. McKENNEY,
Clerk.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1905.

No. [redacted] 97

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ALABAMA AND VICKSBURG RAILWAY COMPANY AND ROBERT H. THOMPSON AND THOMAS A. McWILLIE, ITS SURETIES, PLAINTIFFS IN ERROR.

*V.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

~~BRIEF OP~~POSING

**Motion to Advance.**

# Supreme Court of the United States.

October Term, 1905.

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ALABAMA AND VICKSBURG RAILWAY COMPANY, et als., Plaintiffs in Error,

*vs.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

No. 371.

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In Error to the Supreme Court of the State of Mississippi.

BRIEF OPPOSING

**Motion to Advance.**

Alabama and Vicksburg Railway Company opposes the motion to advance in this case.

It appears from the statement of counsel for defendant in error accompanying the motion, that the only rate involved is the rate between Meridian and Vicksburg affecting only one commodity, that is to say, grain in carload lots.

There are over 3,000 towns in Mississippi. This rate only affects the merchants in two of said towns.

There are over 3,500 ratings in Southern Classification. The rate in question affects only grain from amongst all these 3,500 or more ratings. Necessarily it does not concern or affect the whole population of even Meridian and Vicksburg, but only the grain dealers.

There were in 1904, 3,480.25 miles of railroad in the State of Mississippi. The order appealed from only affects 140 miles thereof.

From the foregoing it is quite clear that while the case is of importance to the Alabama and Vicksburg Railway Company on account of the principle involved, a very small proportion of the public of Mississippi is embarrassed in any way by the appeal, indeed the public is probably not embarrassed at all. Neither is it apparent that there is any appreciable inconvenience to the Government of the State of Mississippi because of this appeal.

It has been held by this court that even in a case where the revenue laws of a State are enjoined, the motion to advance will not be granted unless it sufficiently appears that the operations of the State will be embarrassed by the delay.

Hoge vs. R. & D. R. Co., 93 U. S., 1.
Central Railroad Co. vs. Bourbon County 116 U. S., 540.

It is impossible to conceive how any embarrassment to the State of Mississippi or its Authorities or Government can arise from any delay which may be caused by this appeal.

Therefore, plaintiffs in errors oppose the motion to advance.

Plaintiffs in error reiterate that the principle involved in the appeal is of vital importance to plaintiffs in error as the order deprives them of their property without due process of law, The Railroad Commission of the State of Mississippi having reduced the normal rate on grain when hauled between Vicksburg and Meridian, from 15 cents per hundred pounds in less than carload lots, and 10 cents per hundred pounds in carload lots, to a flat rate of three

and one half cents per hundred pounds, which requires plaintiffs in error to haul the grain at less than the service actually costs. This of course, is vital to the interest of plaintiffs in error, but for the reasons above stated as well as others can not embarrass the public at large.

Plaintiffs in error beg to say that it would be inconvenient, and perhaps impossible for their counsel to properly prepare their case on this appeal, if same were advanced to be heard at the present term of this court, and they respectfully ask that this court refuse the motion to advance.

But should this court grant the motion to advance, plaintiffs in error respectfully pray that the case be advanced for hearing at the next term of this court, that is to say, sometime during the October Term, 1906.

Respectfully submitted,

HARRY H. HALL,

*Counsel for Plaintiffs in Error.*

April 2, 1906.

# FILE COPY.

# No. 97.

## Supreme Court of the United States

OCTOBER TERM, 1906,

No. 97.

~~OCTOBER TERM, 1906.~~

~~No. 974.~~

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JAMES H. McKEN

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.,
Plaintiffs in Error,

VERSUS

RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
Defendant in Error.

## BRIEF OF PLAINTIFFS IN ERROR.

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# Supreme Court of the United States

OCTOBER TERM, 1906,

No. 97.

OCTOBER TERM, 1905,

No. 371.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.,
Plaintiffs in Error,

VERSUS

RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
Defendant in Error.

## BRIEF OF PLAINTIFFS IN ERROR.

This suit originated in the Chancery Court of Hinds County, Mississippi, being one brought by the Alabama & Vicksburg Railway Company, hereinafter referred to as if sole plaintiff in error, to restrain by injunction the

enforcement of the following order of the Railroad Commission of said State, made November 16, 1903:

> "That the Alabama & Vicksburg Railway Company is hereby ordered to put into effect over its line of road from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both said cities, from and after December 8, 1903, a flat rate of 3½ cents per 100 pounds on grain and grain products, and no more."
>
> Record, p. 17.

The Federal questions raised by the bill of complaint, and involved in the final decision of the case, rest upon the contention of the plaintiff in error that the rate is unreasonably low, and that the Commission cannot enforce an unremunerative rate without violating the *Fifth Amendment to the Federal Constitution, providing that private property shall not be taken for public use without just compensation, and the provisions of the Fourteenth Amendment to said Constitution, to the effect that no State shall deprive any citizen of its property except by due process of law, nor deny any citizen the equal protection of the law; and that the order providing for said rate operates, and was intended to operate, as a burden upon, or regulation of, interstate commerce, and is, therefore, obnoxious to Clause 3 of Section 8 of Article I of said Constitution, committing to Congress the regulation of interstate commence.*

On final hearing on the merits, in the Chancery Court, the injunction was dissolved and the bill of complaint

dismissed, the Chancellor setting out, in a written opinion shown by the record, his conclusions of law and fact. The plaintiff in error appealed to the State Supreme Court, and, on the affirmance by that Court of the final decree of the Chancery Court, the writ of error herein was prosecuted.

The Alabama & Vicksburg Railway Company operates a line of road between Vicksburg, Mississippi, and Meridian, Mississippi, a distance of 140 miles.

Printed Transcript of Record, 1-3-35.
Opinion of the Supreme Court of Mississippi, Printed Transcript of Record, 101.

On November 16, 1903, the rate in force, as previously established by the Railroad Commission of the State of Mississippi, on grain for a distance of 140 miles, was, in carload lots, 10 cents per 100 pounds, and, in less than carload lots, 15 cents per 100 pounds.

See Table, Printed Transcript of Record, 36.

Diagram No. 2, herewith, will serve to show the situation involved in this case, and will aid in giving a clear conception of the case itself.

# DIAGRAM No. 2.

Ill. Cen.—Illinois Central R. R.
M. & O.—Mobile & Ohio R. R.
So. Ry.—Southern Ry. Co.
K. Cy. So.—Kansas City Southern Ry.
V. S. & P.—Vicksburg, Shreveport & Pacific Ry.
A. & V.—Alabama & Vicksburg Ry. Co.

It will be noted in the diagram that the Alabama & Vicksburg Railway runs east and west from Vicksburg, Miss., to Meridian, Miss. It will also be seen that the Vicksburg, Shreveport & Pacific Railway runs westwardly through the State of Louisiana from the west shore of the Mississippi River to Shreveport, La., on the Red River.

The subject-matter of this litigation involves rates on grain and grain products.

It is undisputed that no grain or grain products originate at Vicksburg, or on the line of the Vicksburg, Shreveport & Pacific Railway.

Printed Transcript of Record, 50.
Printed Transcript of Record, 57, 46-76.

It also appears that grain does not originate at St. Louis, but is brought into St. Louis as a grain center, and is thence distributed throughout the country.

Printed Transcript of Record, 86.

Diagram No. 2 shows some of the lines connecting with the Alabama & Vicksburg Railway, reaching St. Louis and Kansas City, Missouri, and Dallas, Texas, illustrating the extensive territory from which grain and grain products are shipped to and through Vicksburg. It is undisputed, and must always be borne in mind, that the Alabama & Vicksburg Railway has made and accepted "through" rates and "divisions" with the Vicksburg, Shreveport &

Pacific Railway and the Mobile & Ohio Railroad and their connections, tapping the grain territory.

Printed Transcript of Record, 50.
Printed Transcript of Record, 60-76.
Printed Transcript of Record, 58.
Printed Transcript of Record, 54-59.

It is also undisputed, and must be borne in mind, that grain or grain products could not move from the points where they are grown and manufactured to points of consumption in Eastern or Western or Southern States, or Europe, without the existence of low "through" rates and "divisions."

It likewise appears that the Alabama & Vicksburg Railway Company, in July, 1902, on the application of Vicksburg merchants for a flat rate of three and one-half cents on grain products from Vicksburg to Meridian—a rate then opposed by many Meridian merchants—had, in order to avoid the flat rate threatened to be put in by the Mississippi Railroad Commission, consented to a like *rebilling, through, proportionate,* or *division* rate. Thereupon, it made with its connections—to wit, the Vicksburg, Shreveport & Pacific Railroad and its connections west of Shreveport—a rate from its Kansas City territory to Meridian, via Vicksburg, and with the Mobile & Ohio Railroad, from St. Louis to Vicksburg, via Meridian, accepting for its *proportion* of said through haul from Vicksburg to Meridian, or from Meridian to Vicksburg, the three and one-half cents thus ordered.

It is now contended by the Commission that, because of its acceptance by appellant of three and one-half cents

as its proportion of the through interstate haul, it can be compelled to carry local freight at the same rate, even though at a positive loss.

I submit that:

I.

**The application for this flat rate of three and one-half cents was made, and its enforcement ordered, solely for the purpose of beating down the fair interstate grain tariff of the railroads operating between Meridian and St. Louis.**

*Mr. Harvey,* president of appellant, states:

> That, in the proceedings before the Railroad Commission on the 19th of October, 1903, the Board of Trade of Meridian was represented by the Hon. Monroe McClung, their duly-authorized attorney, who, in his said capacity, avowed, in his argument before the said Commission, that, while the said Board of Trade and parties to be benefited in Meridian did not expect any great quantity of grain to be shipped from Vicksburg over the Alabama & Vicksburg Railway Company, the adoption and enforcement of the said low rate of three and one-half cents would undoubtedly result in compelling the Mobile & Ohio Railroad to reduce its through rate from St. Louis to Meridian to a rate which would be equivalent to the water rate from St. Louis to Vicksburg, plus three and one-half cents from Vicksburg to Meridian.
>
> Transcript, p. 27.

*Harvey,* president, and *Steele,* freight agent, say:

> It is not a fact, and it is not true, that, prior to the issuance of this order, the Vicksburg brokers and

merchants, either by the use of expense bills and the rebilling privilege, or in any other way, could get their grain into Meridian cheaper than the Meridian merchants could get it through Vicksburg and over the same route. * * * The rebilling rate from St. Louis to Vicksburg is twelve cents per hundred, from Vicksburg to Meridian three and one-half cents, making a total of fifteen and one-half cents. The rate from Kansas City to Vicksburg is seventeen cents; add the rebilling rate from Vicksburg to Meridian, or a total of twenty and one-half cents. The rebilling rate from St. Louis to Meridian, via the Mobile & Ohio Railroad, is fourteen cents per hundred pounds; the rate from Kansas City to Meridian, either by the Mobile & Ohio Railroad or the Vicksburg, Shreveport & Pacific Railway, is twenty cents per hundred pounds.

Transcript, p. 57.

These rebilling privileges were granted in all respects to Meridian merchants the same as to Vicksburg, and the agents at Vicksburg and Meridian received instructions to that effect, and the Meridian merchants have availed themselves of this privilege.

Transcript, pp. 58, 47.

*J. T. Russell,* for defendant, says:

*"If I had a man in Vicksburg to do the reconsigning, an expense bill for a shipment consigned to me would be accepted in the same manner as if offered by a Vicksburg dealer. If a Meridian merchant had a man in Vicksburg to do the reconsigning, he could have the same privileges as the Vicksburg merchant, so far as rates from that point are concerned."*

Transcript, p. 87.

And, further, it appears, by the admission of the chairman of the Transportation Committee of the Merid-

ian Board of Trade, that the application to the Mississippi Railroad Commission for said rate was made after the Mobile & Ohio Railroad had refused to reduce the rates from St. Louis to Meridian.

Transcript, p. 75.

It is, therefore, manifestly evident that the purpose, as well as the effect, of this application and ensuing order was to place a restraint upon interstate commerce.

## II.

**The acceptance, whether voluntary or involuntary, of a "rebilling" or "proportionate" interstate rate, is not the acceptance of the same rate as applied to local traffic; and, even though an unremunerative rate were voluntarily adopted by a carrier, such adoption would not justify its imposition by a railroad commission.**

As a matter of fact, the rebilling rate was not voluntarily adopted.

*Mr. Harvey,* president, says:

> It is not true that he stated before the Commission that his road was hauling grain and grain products from Vicksburg to Meridian for other railroads at three cents per hundred pounds, and that the objection to said order of the Railroad Commission was that the company did not have cars enough to do the work, the truth and fact being that he did state to the Railroad Commission, on or about July 22, 1902, that a five-cent rate was as low as would afford his company any profit, *but that, to avoid a contest, he was willing to adopt a rebilling rate of three and one-half cents per hundred pounds on grain*

*in carload lots, provided the shipments did not originate on the said road, but consisted of grain coming to his road from connecting roads in through cars, upon which shipments his road had received a previous haul and revenue;* but, as a large proportion of the outward shipments of the Alabama & Vicksburg Railway were shipments of lumber, staves, cotton, etc., to connecting roads, by which he lost control of his cars, he had to call upon said connecting roads for a proportion of empty cars to move the said through business, which empty cars had to be hauled in that condition to points to be loaded, and he could better afford to accept the said foreign cars loaded with grain at even three and one-half cents per hundred pounds than to haul empty cars.

Transcript, p. 29.

That the expense of receiving and hauling a loaded car delivered to it at Vicksburg by another road is much less than the cost of securing, hauling and placing one of its empty cars upon the switch at Vicksburg for hauling, and again switching to its train-yard, to be made up into a train.

Transcript, p. 30.

That affiant accepted the rebilling rate of three and one-half cents from Vicksburg to Meridian, not because the same was satisfactory or sufficient, but *under the menace of the said Railroad Commission to impose a flat rate of three and one-half cents upon its said road;* that, as a matter of fact, affiant asked for a rebilling rate of five cents, as being the lowest rate that would afford any profit.

Transcript, p. 27.

*Harvey,* president, and *Steele,* freight agent, say:

Prior to July 20, 1902, the rate, carload lots, on grain rebilled from Vicksburg to Meridian, was five cents per hundred pounds; from March 12, 1900, to

December 12, 1901, the rate was three and one-half cents per hundred pounds, but was found not to be remunerative, and, on December 12, 1901, it was fixed at five cents, which was a proper price, and it remained at that price until July 23, 1902, when, in order to meet the wishes of the Mississippi Railroad Commission, the rebilling rate was reduced to three and one-half cents. The advantage of the rebilling rate over the proposed flat rate was that an empty car was always secured for an outbound shipment, and this followed whether the shipment was continuous or not.

Transcript, p. 49.

But, had appellant voluntarily put in this rebilling rate, its action could not be taken as the measure of a local rate.

The absolute necessity of low through rates, to move the great grain crops of this country, has been fully recognized by the Supreme Court of the United States, and the following language from the *Wabash case* will be found in 118 U. S. 557-576:

"So, also, in the present case, the owner of corn, the principal product of the country, desiring to transport it from Peoria, in Illinois, to New York, finds a railroad company willing to do this at the rate of fifteen cents per hundred pounds for a carload, but is compelled to pay at the rate of twenty-five cents per hundred pounds, because the railroad company has received from a person residing at Gilman twenty-five cents per hundred pounds for the transportation of a carload of the same class of freight over the same line of road from Gilman to New York. This is the result of the statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the Supreme Court of that State. The effect of it is that, whatever may be the

rate of transportation per mile charged by the railroad company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and the unloading of the freight are the largest expense incurred by the railroad company, the same rate per mile must be charged from Peoria to the City of New York.

"The obvious injustice of such a rule as this, which railroad companies are, by heavy penalties, compelled to conform to, in regard to commerce among the States, when applied to transportation which includes Illinois in a long line of carriage through several States, shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of the United States, whose enlarged view of the interests of all the States, and of the railroads concerned, better fits it to establish just and equitable rules.

* * * * * * * *

"But, when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States, and upon the transit of goods through those States, cannot be overestimated."

The above-mentioned case is cited for the purpose of illustrating the vast importance which the Supreme Court of the United States has attached to the principle of low through rates, free from State regulation, in order to move the great grain crops of the United States.

It cannot, therefore, be too constantly borne in mind that the traffic concerned in this case is not only corn,

pronounced by this Court, in the *Wabash case,* "the principal product of the country," but other grain and grain products; nor can it be too constantly borne in mind that none of the grain or grain products involved in this case originate at Vicksburg, but are brought long distances from the grain-growing regions of the United States; nor can it be too constantly borne in mind that the rate involved in this case is, as stated by the Supreme Court of Mississippi, "the proportionate rate of three and one-half cents," in effect from Vicksburg to Meridian (Printed Transcript of Record, 100), the same being spoken of at page 60 of the Printed Transcript of Record by Messrs. Harvey, Steele and Jones, witnesses for the railway company, as having been accepted by the Alabama & Vicksburg Railway Company "in the division of through rates of a very low proportion."

In connection with the enormous task of transferring the great grain crops of this country through many States to the various markets of consumption, many important and necessary practices have grown up. For instance, the practice of milling in transit is allowed at various points, and large cities like Minneapolis have come into existence by reason of the fact that grain is brought in by the roads reaching those cities, is unloaded at the elevators, passes into the mills, and is converted into flour, and is then reshipped on the balance of the through rate in its new form, the entire transaction being treated as a shipment of flour from point of origin, where it began as grain

in the raw state, to the point of ultimate destination or consumption, where it arrives as flour.

This milling in transit practice is of the highest benefit and importance to the cities where the mills are located and to the public at large, for it tends to cheapen the transportation of grain and grain products. It has been thoroughly investigated by the Interstate Commerce Commission and approved in a number of cases by that body.

Another practice, known as "reconsigning" or "rebilling," prevails as to grain and grain products, hay and other articles, and exists throughout the country; in fact, were it not for this practice, the hay and grain business of such places as Kansas City, St. Louis, Louisville, Cairo, Evansville, Henderson, and other points too numerous to mention, would be seriously injured if not wiped out of existence.

The same principle has been applied to compressing cotton in transit, and large volumes of cotton, concentrated at points like Memphis, are sorted, graded, compressed and forwarded to various destinations at the through rate from the point of origin to the point of untimate destination. This practice has been fully examined by the Interstate Commerce Commission (8 I. C. R., 121), and the principle fully recognized and approved as being most beneficial to the public, to the carriers and to interstate commerce. In that case the Interstate Commerce Commission said, among other things:

> "It is said that the identical cotton does not pass over the entire route, but that substitution takes place

at the compress point. This is certainly true. If a carload of cotton leaves Hernando for Boston, it is quite probable that no single bale of that cotton ever goes to Boston. If the car in which it came to Grenada reaches that destination, it is practically certain that it will be filled with other cotton, but is this in any way material? Every pound of Hernando cotton finally goes to some point beyond Grenada. It is true that a bale of cotton raised at Grenada may go from Grenada to Boston, by this process of substitution, at the Hernando rate, but, in that event, a corresponding amount of cotton from Hernando must go to some point upon the Grenada rate. However it may be in theory, there can be in fact no discrimination.

"Grenada cotton is bought upon and has the benefit of the Grenada rate, and cannot possibly obtain the benefit of any other rate, and Hernando cotton must go to a point beyond Grenada upon some published rate.

"It is objected that the cotton is not held at the compress point a sufficient time to permit compressing merely, but until sold. Plainly the state of work at the compress must determine the time within which the cotton can be compressed and made ready for shipment. If all persons are to be treated alike, some definite time must be fixed by the railway company within which the privilege may be exercised. It is not objected that the period of sixty days, which is usually fixed, is an improper one.

"It is still further urged that the ownership of the cotton changes at the compress. The testimony does not show this. But, assuming that it did, how would that alter the character of the transaction? The ownership of merchandise frequently changes en route. Bills of lading are usually transferable, and the sale of the bill of lading operates as a transfer of the title to the property. Frequently, the carrier

> takes up the old bill of lading and issues in its place one or more new bills of lading during the period of transit, but this in no way alters the character of the carriage, nor is it apparently in violation of the Commerce Act."
>
> **8 I. C. R., 136-7.**

The same principle has been applied to the manufacture of logs into lumber while in transit, and has proved very beneficial to the commerce of the country, and has received the *imprimatur* of the Interstate Commerce Commission.

**10 I. C. R., 193.**

In truth, great centers of population, large cities and immense mill industries have grown up all over the United States with this practice as a basis, the underlying idea being to give the benefit of the entire low through rate from point of origin to ultimate destination to the product, so that it may freely move in its original form or in some converted form.

In the Swift case, **United States vs. Swift, 196 U. S. 375,** this Court held:

> "A current of commerce among the States is created by the constantly recurring course of cattle moving from various States to certain stockyards and packing-houses, being there slaughtered and sent out in the form of dressed beef to all parts of the country."

It was there held, in effect, that there was a continuous movement of traffic from the time when the herds are driven from the fields to the railroad station until the

dressed beef was laid upon the table of an English squire. It did not require a through bill of lading to make this. The facts made it. Nor would the Court listen to one of these defendants if he were to say: "This particular round of beef I can identify as having come from a steer raised in Illinois."

The absolute necessity of low through rates to make the movement of interstate and foreign traffic possible was fully emphasized by this Court in the *Import Rate Case,* 162 U. S. 197, where a low division of a through rate from Liverpool to San Francisco, via New Orleans, was involved, as against a higher local from New Orleans to San Francisco. It is an incontrovertible fact that traffic will not move long distances unless low through rates are accorded it. The grain will be burned upon the farms first.

In order, then, to apply this most beneficial principle of low through rates from points of origin to points of consumption, the carriers of the country have, in the general interest of commerce and of shippers, cities and towns, made low through rates from points of origin to points of consumption, and issued joint through tariffs with their various connections, and have, in order to facilitate the movement, entered into the practice of "rebilling in transit," "reconsigning in transit," and "compressing in transit," "milling in transit," etc., and the entire trade and commerce of this country has been built up and millions of capital invested with reference to these practices.

It is necessary to bear all this in mind to appreciate the case at bar, which strikes a blow at the beneficent principle of "rebilling in transit."

The Supreme Court of Mississippi, without any evidence at all to support its definition, and in direct contradiction of all known practices throughout the United States, has thus defined "a rebilling rate":

> "A true rebilling rate is one in which goods received in unbroken carload lots over one line of railway can be rebilled over the same or another line, completing one continuous trip of the same commodity, simply changing the consignee and altering the destination of the identical shipment, without unloading or handling of freight."
>
> Printed Transcript of Record, 101.

This definition would destroy every grain and hay dealer in St. Louis, Kansas City, Cairo, Louisville, Evansville and Henderson. It would destroy Minneapolis as a flour-milling point. It would destroy Memphis as a cotton-compressing point.

In view of the foregoing, therefore, we repeat that it cannot be too constantly borne in mind that the three and one-half-cent "rebilling rate" was, in reality and in fact, as the Supreme Court of Mississippi says, "a proportionate rate."

Printed Transcript of Record, 100.

And, as witnesses for the Alabama & Vicksburg Railway Company say, is "a division of a through rate."

Printed Transcript of Record, 50-60.

Referring to Diagram No. 2, it will be noted that the Alabama & Vicksburg Railway connects with lines of

railway across the Mississippi River in Louisiana, and these in turn reach out into Texas, Kansas, Missouri and elsewhere into the great grain-growing regions of the United States; that grain shipments start at Kansas City or beyond, or at St. Louis or beyond (Transcript, 57, 76, 86), and all grain, when it reaches Vicksburg, has traveled many hundred miles. It is to the interest of Vicksburg that any flour-mills located there (if there be such) should have the privilege of transforming the grain into flour and shipping it to Meridian and other points, where it may be consumed. If there are no flour-mills at Vicksburg, it is to the interest of Vicksburg, as it is to the interest of St. Louis, that grain and hay and other articles of that description should be sorted, graded, etc., after they have crossed the Mississippi River at Vicksburg, and before they resume their journey to the points of consumption. It certainly is to the interest of interstate commerce as a whole that this practice should be permitted, and carriers encouraged to make through rates and to haul grain and grain products at low divisions or proportions of through joint rates.

The principle of "rebilling" or "reconsigning" is most beneficent to the interstate commerce of the country. It is quite clear, as the Interstate Commerce Commission has frequently found, that, while identity of the article cannot be, in the nature of things, preserved, still a current of interstate trade is created, and that in no event can more cotton or more grain be shipped out of a rebilling or reconsigning point to any particular point of ultimate destination than the actual amount of through grain

or other product that has come into the particular rebilling or reconsigning point. It is not disputed that every pound of grain which is rebilled at Vicksburg has previously come into Vicksburg from the West.

Upon surrender of what is known as "an expense bill," which is only issued to represent a certain amount of grain actually brought into Vicksburg, the holders of these "expense bills" have the right to ship out within a reasonable time (ninety days in this case) an equal amount of grain or grain products from Vicksburg. This is precisely in accord with the practice throughout the United States, which has had the full approval of the Interstate Commerce Commission.

It, therefore, appears that the traffic involved in this case is actually interstate commerce; that is to say, grain moving from points such as Kansas City, St. Louis (Transcript, 57, 76, 86), Dallas, etc., across a long line of States, stopping at Vicksburg for a brief period, and then being reconsigned or reshipped to the ultimate point of destination at the balance of the through rate.

A "division" of the through rate for the carriage of this interstate traffic did not, and does not, and cannot, in any way concern the Mississippi Railroad Commission, and yet this record shows that the Mississippi Railroad Commission has undertaken to force the Alabama & Vicksburg Railway Company to use and apply this "division" of a through rate, representing a long haul through many States, to traffic originating and ending within the borders of the State of Mississippi. Under a misconception of the term "discrimination," the Rail-

road Commission of Mississippi and the Supreme Court of Mississippi have done the identical thing which was condemned by this Court in the *Wabash Case,* 118 U. S. 557; and, to again repeat the language of this Court in the *Wabash Case,* which is directly applicable to the order of the Mississippi Railroad Commission:

> "The effect of it is that, whatever may be the rate of transportation per mile charged by the railroad company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and the unloading of the freight are the largest expense incurred by the railroad company, the same rate per mile must be charged from Peoria to the City of New York."

In the *Wabash Case* the Supreme Court of Illinois held that the carriage of grain through to New York at less than the rate charged for carrying grain over the same line between points in Illinois was a discrimination against the interstate traffic of Illinois, just as the Supreme Court of Mississippi in this case has held that the division of a through rate imposed and collected by the Alabama & Vicksburg Railway for the carriage of freight from Kansas City or St. Louis was a discrimination against local freight hauled between Vicksburg and Meridian.

> "But what we mean to decide is that a through tariff on a joint line is not the standard by which the separate tariff of either company is to be measured or condemned."
>
> **52 F. R. 915.**

This ruling was affirmed by the United States Supreme Court in **Parsons vs. Chicago & N. W. Ry. Co., 167 U. S.**

**447.** In announcing the opinion of this Court in that case, Mr. Justice Brewer said:

> "That the portion of a through rate received by one of the companies party thereto may be less than its local rate is not questioned. The Interstate Commerce Commission, which has filed a brief in this case, and which has criticised some of the views expressed in the opinion of the Court of Appeals in the *Osborne Case*, concedes this, and also that the judgment in that case was right."
>
> **167 U. S. 457-8.**

To better illustrate that the *Wabash Case* and the case at bar are identical in the principle of attempting to enforce the same rate per mile on long-distance through interstate traffic as on short-distance local intrastate traffic, we refer to Diagrams Nos. 1 and 2. Diagram 1 shows the situation in the *Wabash Case.*

The red line between Gilman, Illinois, and Sheldon, Illinois, indicates the portion of the line where the rate per mile fixed by the statute of Illinois was charged and imposed, and which "same rate per mile" was, in an "endeavor to prevent unjust discrimination, as construed by the Supreme Court of that State" (**118 U. S. 557**), sought to be enforced between Peoria, Illinois, and New York City.

This was condemned as a "deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States (which) cannot be overestimated."

Diagram 2 shows the situation in the case at bar.

DIAGRAM No.1.
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW JERSEY
PEORIA
GILMAN
SHELDON
LOGANSPORT
PITTSBURG
CINCINNATI
COLUMBUS
CHICAGO & ST. LOUIS RY.
PITTSBURGH
PENNSYLVANIA R. R.
HARRISBURG
PHILADELPHIA
NEW YORK
Delaware R.
Hudson R.
DEL.
ST. LOUIS
Miss. R.
Ohio R.
CINCINNATI

The red line between Vicksburg, Mississippi, and Meridian, Mississippi, indicates the portion of the line where the rate per mile fixed by the Railroad Commission of the State of Mississippi was charged and imposed, which "same rate per mile" is in an "endeavor to prevent unjust discrimination as construed by the Supreme Court of that State" (**118 U. S. 557**), sought to be enforced between Kansas City, Missouri, and Meridian, Mississippi. This must be condemned as a "deleterious influence upon the freedom of commerce among the States, and upon the transit of goods through those States," which "cannot be overestimated."

True, in the case at bar, a reduction is made instead of an increase, as was done in the *Wabash Case*, but this does not remedy the inherent vice of the principle which attempts by State authority to make railroads apply "the same rate per mile" to both interstate and intrastate traffic.

The case at bar is precisely the one supposed by Mr. Justice Miller in **118 U. S. 557-575**, for it is the same principle operating in the reverse direction to the haul involved in the *Wabash Case*. At page **575 of 118 U. S.**, it will be noted Mr. Justice Miller supposes a case in the reverse direction, and uses the following language:

> "Let us see precisely what is the degree of interference with transportation of property or persons from one State to another which this statute proposes. A citizen of New York has goods which he desires to have transported by the railroad companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car

loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier: 'I am free to make a fair and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that State, pursuing at the same time this continuous track, I am met by a law of Illinois which forbids me to make a free contract concerning this transportation within that State, and subjects me to certain rules by which I am to be governed as to the charges which the same railroad company in Illinois may make, or has made, with reference to other persons and other places of delivery.' So that, while the carrier might be willing to carry these goods from the City of New York to the City of Peoria at the rate of fifteen cents per hundred pounds, he is not permitted to do so because the Illinois Railroad Company has already charged at the rate of twenty-five cents per hundred pounds for carriage to Gilman, in Illinois, which is eighty-six miles shorter than the distance to Peoria."

By substituting Kansas City for New York, and Meridian for Peoria, and the State of Mississippi for the State of Illinois, the above citation presents exactly the situation in the case at bar. By the order of the Mississippi Railroad Commission and the law of the State of Mississippi as construed by the Supreme Court of Mississippi, the Alabama & Vicksburg Railway Company is forbidden to charge any other than exactly "the same rate per mile" on grain from Kansas City to Meridian as is charged from Vicksburg to Meridian.

On the 3d day of December, 1903, the Alabama & Vicksburg Railway Company filed its bill of complaint in the Chancery Court of Hinds County, Mississippi, against the Railroad Commission of the State of Mississippi, praying that said Commission be enjoined and restrained from enforcing the above-mentioned order reducing the rate on grain and grain products from 10 cents per 100 pounds in carload lots, and 15 cents per 100 pounds in less than carload lots, to "a flat rate of three and one-half cents per 100 pounds on grain and grain products, and no more," when same are transported between Vicksburg, Mississippi, and Meridian, Mississippi.

Transcript of Record, 1, 2, 3, 4, 5, 6, 7.

In the case at bar the Supreme Court of Mississippi takes the position that the rate of three and one-half cents was voluntarily put in force by the Alabama & Vicksburg Railway Company between Vicksburg and Meridian, and, therefore, justifies the order of the Railroad Commission on the ground that, said rate being a voluntary rate, the Railroad Commission has a right to enforce the same as a matter of law to prevent discrimination. We have already seen that the rate of three and one-half cents per hundred pounds was a "division" or "proportion" of a through rate, and it is so spoken of by the Supreme Court of Mississippi itself, at page 100 of the Transcript of Record, wherein the Supreme Court of Mississippi uses the following language:

> "On December 13, 1902, the Board of Trade of Meridian presented to the Railroad Commission of

> Mississippi a petition praying that the *proportionate* rate of three and one-half cents then in effect from Vicksburg to Meridian be made an open rate subject to the use of all shippers from Vicksburg." (Italics ours.)

A low proportion or division of a through rate is in the highest interest of commerce, and this Court has held in the **Wabash Case, 118 U. S. 557,** that it would be the greatest injustice for any State tribunal, "in its endeavor to prevent unjust discrimination," to force a railway company to carry long-distance through freight at local intrastate rates, and that an attempt to do so would be an interference with interstate commerce.

As a matter of fact, therefore, it is clear that the institution, adoption and establishment on the part of the railway company, of a "division" or "proportion" of a joint through rate, is not the same as, or anything like, the adoption, establishment or institution of a local intrastate rate, and is no discrimination.

Furthermore, as a matter of law, this Court has distinctly held that a voluntary act of a carrier in establishing low rates is no warrant for a Legislature or governmental bureau to force said low rates upon a carrier.

In the case of **L. S. & M. S. vs. Smith, 173 U. S. 684-697,** Mr. Justice Peckham, in announcing the opinion of this Court, uses the following language:

> "It is no answer to the objection to this legislation to say that company has voluntarily sold thousand-mile tickets, good for a year from the time of their sale. What the company may choose voluntarily to

> do furnishes no criterion for the measurement of the power of a Legislature. Persons may voluntarily contract to do what no Legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the Legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in a Legislature to pass a statute in relation to the same business imposing additional burdens upon the company."

In the case of **M. & S. L. Ry. Co. vs. Minnesota Railroad Commission, 186 U. S. 268,** this Court again announced the principle that the voluntary act of the carrier in instituting a low rate does not clothe a Railroad Commission with the right to compel such a rate as a matter of law. In other words, that the voluntary act of the carrier is not a criterion of the power of a Legislature. In the case last mentioned Mr. Justice Brown says:

> "It sometimes happens that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss; and, while it may not be within the power of the Commission to compel such a tariff, it would not, upon the other hand, be claimed that the railroads could in all cases be allowed to charge grossly exorbitant rates, as compared with rates paid upon other roads, in order to pay dividends to stockholders."

If it be conceded that the rebilling rate of three and one-half cents was a voluntary one, it was only voluntary

when coupled with the incidents and conditions upon which it had been assented to by the railway company. When these incidents and conditions were the inducement that led the railway company to tolerate the rate, the Commission cannot claim that the rate is the same voluntary one when disconnected by its action with such incidents and conditions. The record shows, without controversy, that the railway company agreed to put in the rate of three and one-half cents per one hundred pounds only as a rebilling rate, and the order of the Commission requires it to put in a flat rate of the same amount; that is to say, a rate on all shipments from Vicksburg to Meridian, with Vicksburg as the point of origin. It shows further that the three and one-half cent rate yielded no direct profit, and the railway company consented to it as a rebilling rate, because, when operated as a rebilling rate, it would give the company the control of the freight cars in which grain products had been brought South for utilization in shipments to the North, and, too, because it was allowed to participate by its Western connections in a slight degree in the interstate charge to Vicksburg. If it be unlawful for a railway company to give a rebilling rate from a point on interstate shipments which reach that point over one railway line, and not give it to those reaching it over another railway line, which we deny, it would seem that the other railway line is the only party who can complain, and certainly this is true where, as in the present instance, the shipments are of grain and grain products, all of which reach the city from the same

recognized grain-producing centers in other States, and the interstate rate on all the railroads is the same. Manifestly, dealers who wish to avail of the rebilling rate have no greater interstate charge to meet than if the shipments were made by another line. In other words, this is a matter in which dealers have no interest—the interstate rate being the same on all the lines. There are but two other lines reaching Vicksburg besides that of the plaintiff in error, and the one to which the rebilling rates does not apply has never complained.

It will be observed that the particular objection of the Meridian dealers is to the use by the Vicksburg dealers of expense bills for grain received over the Vicksburg, Shreveport & Pacific line within ninety days after their date; in other words, to what they choose to assert is an abuse of the rebilling rate. Now, it will be seen that the Commission did not forbid this alleged abuse, to which action the railway company might not have objected, but proceeded to require by order a domestic rate of three and one-half cents, which, as shown beyond all question, involves an actual loss to the railway company on every carload.

There was certainly no flat rate of three and one-half cents in force when the order was made, for otherwise there would have been no occasion for the order, and it is absurd to talk about that as a previously existing voluntary rate.

If, however, we concede that it was a voluntary rate, that by no means involves the proposition that, when it

became entirely unremunerative, the railway company cannot abandon it. The company could readily abandon it by proper instructions to those in charge of its traffic department but for the compulsory course taken by the Commission in requiring it to be put in force by an order to that effect. With that order in force, they could not refuse compliance, notwithstanding their determined opposition to the flat rate, without incurring the statutory penalties mentioned in the bill. In other words, to abandon the unremunerative rate they were compelled to attack the order requiring it to be put in force. As before remarked, there is no question about the rate being unremunerative.

While the enforcement of the Commission's order would be injurious to the plaintiff in error, by enabling the Vicksburg dealers, who are not complaining, to require the grain reaching Vicksburg by the Yazoo & Mississippi Valley road should also be carried to Meridian at three and one-half cents, it could not by any possibility benefit the Meridian dealers, since the barge trade, unable to compete with the railroads, has been abandoned, and the all-rail interstate rate to Vicksburg from St. Louis, the chief grain-producing point, is the same on all the roads—that is to say, twelve and one-half cents, which, in conjunction with this rate ordered, would be fifteen and one-half cents, while Meridian now has an all-rail interstate rate of fourteen cents over the Mobile & Ohio and other lines reaching that city. The order would be of some advantage to the Vicksburg dealers, who are not asking for it; but, to use

the rate it directs, the Meridian dealer would have to pay one and one-half cents more than he now pays.

The record shows that the rebilling rate has been always open to the Meridian dealers, and that they have to some extent made use of it. It further shows that, if they would have a man at Vicksburg to do the reconsigning, they would have substantially the advantages that accrue from it to the Vicksburg dealers. One man at Vicksburg could do the reconsigning for all of the Meridian dealers, and his compensation divided among them would be a most insignificant expense. They do not reflect that it also costs the Vicksburg dealers something to carry on their business. Nothing is better settled in this Court than the right of a railway company to abandon an unreasonably low rate, although it be a voluntary one. It has been distinctly held that what a railroad company may do, or contract to do, voluntarily, furnishes neither a criterion for the measurement of State authority nor for the reasonableness of the thing exacted by such authority.

**Lake Shore, Etc. vs. R. C. Smith, 173 U. S. 697.**

In this connection it is to be noted that the desire to obtain cars from connections did not result from an insufficient equipment of appellant's line.

*Wm. Harvey*, president, states:

> The Alabama & Vicksburg Railway has 787 freight cars, or 5.55 cars per mile, an equipment ample for the company's business for points on its own line. The average number of freight cars per mile in Group V. including Mississippi, Alabama,

Kentucky, Georgia and Florida, was 4.5 cars per mile. The aggregate number of cars in its six trains per day are 126; but, owing to delays at stations and to shippers not promptly loading cars, or to consignees not promptly unloading cars, the company has to provide four or five times the number of cars actually run in their daily trains. Many of its cars are engaged in hauling lumber to Ohio River points, cotton to Carolina or New England points, so that its cars used in such shipments are absent for weeks, and even months, at a time. It is frequently necessary to offer inducements in the shape of accepting lower-rate traffic to get cars from connecting roads and load with return shipments, and this, even though the rates be not paying ones.

Transcript, p. 31.

III.

**The rate of three and one-half cents is less than the actual cost of hauling. For a State, under pretense of regulating tariffs, to require a railroad company to carry freight at a loss, would be a taking of private property for public use without compensation and without due process of law.**

*Jones,* auditor, says that the cost of appellant's railroad, as shown by tabulated statement at page 14 of the transcript, was $11,880,607.28; that the average business earnings for the past five years have been $920,000 per annum; the average operating expenses $696,000; that the owners of a majority of the stock, who have held it since 1881, have received on the stock and bonds an

average annual return for the last five years of but little more than three per cent., and that for many years they received nothing.

Transcript, pp. 14, 15.

*Mr. Harvey*, president, demonstrates specifically that the flat rate of three and one-half cents would not pay the actual cost of hauling, and in the estimate of this cost *he does not include fixed charges and interest on bonded indebtedness*, so that the suggestion of the Mississippi Supreme Court—that the *value of the property* was not satisfactorily established—is without relevancy.

*Mr. Harvey* says:

> That grain and grain products could not be hauled over affiant's road at the rate of three and one-half cents per hundred pounds, except at a material loss to the said company; that during the year ending June 30, 1903, there were 3,089 tons of grain and grain products billed from Vicksburg to Meridian at $3,657.86, or an average rate of $1.184 per ton; that 3,089 tons of grain and grain products constitute 160 carloads, giving an average per car of 18.6 tons, which is a sufficient load for the capacity of the car; that the average weight of these 160 cars is 15.5 tons each, so that the live load was 54.54 per cent. of the total. From Vicksburg to Jackson the average maximum engine-hauling capacity is 781 tons; from Jackson to Meridian, 819 tons. It is impossible, however, to maintain this maximum average. A fair working maximum engine load would be 85 per cent. of the theoretical maximum, or 664 tons from Vicksburg to Jackson, and 696 tons from Jackson to Meridian. Of the maximum theoretical load, grain would form 54.54 per cent., or 426 tons, from Vicksburg to Jackson, and 447 tons from Jack-

son to Meridian. Of the maximum practical load of 85 per cent., grain would form 362 tons from Vicksburg to Jackson, and 380 tons from Vicksburg to Meridian.

For the fiscal year ending June 30, 1903, the average trainload of freight on said railroad was 239.9 tons, as against the average trainload in this territory, of 219.96, as given by the report of the Interstate Commerce Commission for 1902 at page 67.

At three and one-half cents per hundred pounds from Vicksburg to Meridian, the earnings would be, on 362 tons from Vicksburg to Jackson, and 380 tons from Jackson to Meridian, $261.80.

The expenses for freight for the year ending June 30, 1903, were $598,713.30. The expenses for freight per freight-train mile were 2.176. The expenses, therefore, per freight train, Vicksburg to Meridian, were $304.64, being, therefore, greater than the earnings ($261.80) by $42.84. This does not take into consideration fixed charges, which make the total cost per freight train $337.48, as against a total earning capacity of $261.80; that is to say, a loss of $85.68.

This, also, does not take into consideration the cost of returning the empty cars, which would be about two-thirds of the cost of hauling a loaded train, or about $230, nor does it take into consideration any dividends due the stockholders.

Transcript, p. 28.

*Jones,* auditor, says:

The total freight expenses ($598,713.37) do not include anything for fixed charges, such as interest on bonds, etc. These expenses are for transportation, maintenance of equipment, general expenses and taxes.

Transcript, p. 51.

The detailed exhibit and statement of operating expenses are found at Transcript, page 43.

> Grain to be shipped in barges from St. Louis and river stations to Vicksburg would have to be taken in cars from the riverside and hauled up the hill to Vicksburg, a distance of over two miles, with a grade of 1.6 per cent, the cost of such switching to and from the river front, $3 per car, having to be borne out of the three and one-half cent rate. At three and one-half cents per hundred pounds, an average carload of grain (18.6 tons) yields $13.02 per car. Deducting from this $3 for switching, would leave $10.02, or 2.7 cents, per hundred pounds for hauling the load 140 miles, to which must be added the cost of the switching at Meridian, and the return of the empty cars to Vicksburg.
>
> Transcript, pp. 30, 31.

*Jones*, auditor, says:

> A reduction of the grain rate from Vicksburg to Meridian to three and one-half cents would be a reduction of forty-one per cent. on present rates, and would work a loss to the railroad company, and if applied, as it might be, with equal justice to other earning accounts, would result in a reduction of revenues of $471,000, and would not leave sufficient receipts to provide for the operating expenses by $170,000; and he confirms the affidavit of C. C. Harvey.
>
> Transcript, p. 48.

> Grain and grain products brought to Vicksburg in barges to be reshipped over the Alabama & Vicksburg Railway would be regarded as local freight, and the cost for moving it—that is, furnishing cars to receive it, and switching the cars—would be even

greater than the expense of handling other local freight.

Transcript, p. 51.

*L. Green,* general freight agent of the Southern Railway Company, states under oath:

The rate of three and one-half cents per hundred pounds on grain and grain products from Vicksburg to Meridian is unreasonable and unjust, and affiant knows of no such low rate on the same commodity, for the same distance, on any railroad in the United States; and, under conditions affecting transportation in Mississippi, would, in his opinion, cause an actual loss to the carrier.

Transcript, p. 63.

*C. B. Compton* states under oath:

I am the traffic manager of the Louisville & Nashville Railway Company. The rate in question is unreasonably and unjustly low, and of itself unreasonably and unjustly low as compared with rates on similar traffic in other parts of the United States, and it would cause an actual loss to the carrier.

Transcript, p. 63.

*C. C. Cameron,* general freight agent for the Illinois Central Railroad, makes an affidavit to the same effect.

Transcript, p. 64.

*Haiden Miller,* general freight agent of the Mobile & Ohio Railroad, makes an affidavit to the same effect.

Transcript, p. 64.

"The opinion of experts, familiar with railroad business, is competent testimony, and cannot be disregarded."

**Minneapolis, etc., R. Co. vs. Tompkins, 176 U. S. 167.**

Among other grounds set forth in said bill of complaint, asking said injunction, is:

That the enforcement of said order would require the Alabama & Vicksburg Railway Company to transport freight without reward, and that its private property would thereby be taken for public use without just compensation, and it would be deprived of its property without due process of law, contrary to Amendment XIV of the Constitution of the United States, as well as contrary to certain provisions of the Constitution of the State of Mississippi.

Sections 6, 7, 8, 9, 10, 11, Bill of Complaint.
Printed Transcript, 4, 5, 6.

The Federal question thus raised in the bill of complaint was pressed and argued before the Courts in Mississippi. That it is necessarily involved in the judgment will better appear by discussing it, which we now proceed to do.

**Chancellor Finds as a Fact That Three and One-Half Cents Rate on Grain, Imposed by the Mississippi Railroad Commission, Requires Railway Company to Haul at a Loss. Supreme Court of Mississippi Affirms This Finding.**

The Chancellor says:

"It is shown by the testimony of Mr. Harvey that the three and one-half cent grain rate to Meridian can only be handled by the company at a loss."

Transcript of Record, 96.

Again, the Chancellor finds:

> "If, on the entire business done over the road, there is a profit, the Commission may reduce the rate on a particular article of freight *below the cost of haul*, if a profit is left on the entire business." (Italics ours.)
>
> Printed Transcript, 97.

These findings of the lower Court—to wit, the Chancery Court of the First District, Hinds County, Mississippi—were not overruled by the Supreme Court of Mississippi, but, on the contrary, were affirmed and treated as immaterial, the Supreme Court using the following language:

> "Again, it is stated by the appellant that the hauling of grain and grain products at a flat or open rate of three and one-half cents per hundred pounds would produce less than the actual cost of transporting the freight, so that the more business of this character the appellant handles the greater its loss; that this, in effect, is the taking of the property of appellant without due process of law; wherefore, the order is void as being in contravention of the Constitution of the United States. To this it is replied that the figures shown in the record do not prove that freight handled in the usual and customary course of business as freight trains are ordinarily constructed, at the rate established, would result in a loss. Again, it is said, in further answer to this contention, that appellant is only entitled to fix such tariff of charges as will yield a fair compensation for the transportation and handling of freight and assure that the net profits arising from appellant's entire business, after payment of all operating expenses, will pay a reasonable interest on the value

of its property; and, as the real value of the property is not disclosed by the record, the appellant has no ground of complaint on this score, and the Court is furnished no definite proof to justify a finding of fact that the owners do not receive reasonable returns from their investment.

"We decline to enter upon a discussion of either question; neither is necessarily involved in the decision of this case. It might be conceded that the intrastate business of the railroad results in a net loss, and might further be conceded that the transportation and handling of grain and grain products at the rate established may not in actual operation bring a fair remuneration when limited to that one commodity; nevertheless, the rate, having been established by the voluntary action of the appellant, it must not be so enforced as to operate as an unjust discrimination against anyone."

Transcript of Record, 106-107.

The evidence amply supports the findings of the Mississippi Courts—that the rate requires the complainant to haul at a loss, as appears from the foregoing excerpts of testimony.

From all of the foregoing, it amply appears that the flat rate of three and one-half cents per hundred pounds, established by the Mississippi Railroad Commission from Vicksburg to Meridian, requires the Alabama & Vicksburg Railway Company to haul grain below the actual cost of transportation or movement, as was found by both the Court of Chancery and the Supreme Court of Mississippi, *and is thoroughly established by the evidence.* It also appears that Amendment XIV to the Constitu-

tion of the United States was invoked in the bill of complaint, and this Federal question raised in the Courts of Mississippi, and the same is specially mentioned in the opinion of the Supreme Court of Mississippi.

Printed Transcript of Record, 106-7.

*Chief Justice Whitfield,* of the Mississippi Supreme Court, certified that, upon the argument and hearing of this cause, the validity of the order of November 16, 1903, was drawn in question, on the grounds:

1. That the rate was unreasonably low, and would yield no compensation to the railroad company for the use of its property, and was, hence, a violation of Amendments V and XIV of the Constitution of the United States, as taking property of the railway company without just compensation and without due process of law, and as denying it the equal protection of the law.

2. That the order was repugnant to Clause 3 of Section 8 of Article 1 of the Constitution, in that it constitutes a burden on interstate commerce.

3. That, inasmuch as no such low rate was enforced on any other railroad in Mississippi, the order denied to this railway company the equal protection of the law.

4. That Section 4290 of the Mississippi Code, requiring the Railroad Commission to take into consideration the *entire* earnings of the railroad, is invalid, as being in violation of the interstate commerce clause of the Constitution.

5. That, inasmuch as Section 4290 of the Code, the sole authority of the Railroad Commission, requires it,

in fixing rates, to consider the *entire* business of the railway company, if it did not do so, its action would deprive the company of its property without due process of law.

And, in all of these contentions, the Chief Justice certifies *"that the decision of the said Supreme Court was in favor of the validity of said order, and of the authority of said Railroad Commission to make the same."*

Transcript, p. 112.

The effect of this certificate is considered in **Mr. Taylor's** work on the **Jurisdiction and Procedure of the United States Court,** at page 452. Again he says that:

> Questions arising under the Constitution and laws of the United States, when properly presented in a record, cannot be disposed of by a State appellate Court by the simple process of ignoring them. We know of no better citation of the law of this subject than is to be found in the admirable work of one of the counsel for defendant in error.
>
> **Taylor's Jurisdiction and Procedure U. S. Sup. Ct., p. 444.**

> "The contention of the city—that the writ of error should be dismissed for want of jurisdiction in this Court—cannot be sustained. It is true that the judgment of the State Court rests partly upon grounds of local or general law. But, by its necessary operation—although the opinion of the State Court does not expressly refer to the Constitution of the United States—the judgment rejects the claim of the company, specially set up in its answer—that the relief of the city cannot, in any view of the case, be granted consistently, either with the contract clause of the Constitution, or with the clause prohibiting the State from depriving anyone of his property with-

out due process of law. If that position be well taken, then a judgment, based merely upon grounds of local or general law, would be error; for the Federal questions raised cover the whole case, and are of such a nature that the rights of the parties could not be finally determined without deciding them, as the judgment, by its necessary operation, denied the company's claim, based on the Constitution of the United States. This Court has jurisdiction to inquire whether those clauses are sustained by that instrument. Our views on the question are fully stated in *Chicago vs. Drainage Comrs.*, 200 U. S. 561."

**West Chicago Railway vs. Chicago, 201 U. S. 519.**

On this showing of the record, it is idle to argue that a Federal question is not necessarily involved in the judgment, and the right set up by and denied to appellant, that the Federal Constitution prohibits a State Railroad Commission forcing it to work for nothing, or less than nothing, thus confiscating its property, must be passed on by this Court.

On this point the Courts have said:

"No one can be compelled to serve the public for nothing. Private property of no kind, including railroad property, can be used for public purposes without compensation. *(Smyth vs. Ames,* 169 U. S. 467, 18 Sup. Ct. 418, 41 L. Ed. 819; *Road Co. vs. Sandford,* 164 U. S. 578, 17 Sup. Ct. 198, 41 L. Ed. 560; *Chicago, M. & St. P. R. Co. vs. Minnesota,* 134 U. S. 418, 10 Sup. Ct. 462, 33 L. Ed. 970; *Railway Co. vs. Smith,* 173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858.) All these cases determine that a railroad company, in the full enjoyment and use and capacity to use its franchises, cannot be compelled to exercise its fran-

chises without reasonable remuneration. *A fortiori,* a railroad corporation, or a person owning a railroad, cannot be compelled to operate that road, not only without remuneration, but at a loss. And this not by any means because such corporation or person is insolvent. If a citizen has the wealth of the Rothschilds, he cannot be compelled to use a dollar of his wealth for public purposes without compensation."

**Jack vs. Williams, 113 F. R. 823-827.**

Mr. Justice Brewer, in **Chicago, etc., R. Co. vs. Becker, 35 F. R. 883,** uses the following language:

"State Railroad Commissioners cannot enforce a schedule of rates for switching cars in a city which fixes the compensation at less than the actual cost to the railroad company for the work."

In **Ames vs. Union Pac. Ry., 64 F. R. 165-188,** the Court says:

"If it would be unreasonable to reduce the total earnings of these roads 29½ per cent., it is—*prima facie,* at least—equally unreasonable to so reduce any single fractional part of such earnings."

If a reduction below cost were made on all freights, there could be no benefit on either domestic or interstate business. The testimony in this case shows that a reduction of the same percentage on all the business would leave an immense deficit in revenue. (Record, p. 48.)

The reduction of the rate on a single commodity to a figure below cost of carriage involves the same principle as an unreasonable reduction of the schedule as a whole,

and we again refer the Court to the leading case of **Smyth vs. Ames, 169 U. S. 466,** and cite the following as along the same line of decision:

**Nor. Pac. R. vs. Keyes, 91 Fed. Rep. 47.**
**South Pac. R. Co. vs. Railroad Com., 78 Ib. 236.**
**Metropolitan Trust Co. vs. Houston, etc., R. Co., 90 Ib. 683.**
**Cin. etc., R. Co. vs. Dey, 35 Ib. 866.**
**St. Louis, etc., R. Co. vs. Gill, 156 U. S. 649.**
**Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362.**

In **Smyth vs. Ames, 169 U. S. 466,** this Court says:

"1. A railroad corporation is a person within the meaning of the Fourteenth Amendment, declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"2. A State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as, under all the circumstances, is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would, therefore, be repugnant to the Fourteenth Amendment of the Constitution of the United States.

"3. While the rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and, therefore, without due process of law, cannot be so conclusively determined

by the Legislature of the State, or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry."

Page 526.

"It is further said, in behalf of the appellants, that the reasonableness of the rates established by the Nebraska statute is not to be determined by the inquiry whether such rates would leave a reasonable net profit from the local business affected thereby, but that the Court should take into consideration, among other things, the whole business of the company; that is, all its business, passenger and freight, interstate and domestic. If it be found upon investigation that the profits derived by a railroad company from its interstate business alone are sufficient to cover operating expenses on its entire line, and also to meet interest, and justify a liberal dividend upon its stock, may the Legislature prescribe rates for domestic business that would bring no reward and be less than the services rendered are reasonably worth? Or, must the rates for such transportation as begins and ends in the State be established with reference solely to the amount of business done by the carrier wholly within such State, to the cost of doing such local business, and to the fair value of the property used in conducting it, without taking into consideration the amount and cost of its interstate business, and the value of the property employed in it? If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons

and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and, when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund, and that its capitalization is on its entire line, within and without the State, can have no application where the State is without authority over rates on the entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business."

Page 542.

"The fact that the State of Nebraska can reach only one-twentieth of the total earnings gives it no greater right to make a reduction in respect to that one-twentieh than it would have, had it the power over the total earnings, and attempted in them a like per cent. of reduction. If it would be unreasonable to

reduce the total earnings of these roads 29½ per cent., it is—at least, *prima facie*—equally unreasonable to so reduce any single fractional part of such earnings."

Page 543.

In **Lake Shore & Michigan Southern Railway Co. vs. Smith, 173 U. S. 684,** it was said:

"It is also alleged that the act was in violation of the Fourteenth Amendment of the Constitution of the United States, and that it deprived the company of its property and liberty of contract without due process of law, and also deprived it of the equal protection of the laws. The act was also alleged to be in violation of the Constitution of the State of Michigan on several grounds.

"The Supreme Court of the State decided that there was no contract in relation to the rates which the company might charge for the transportation of passengers, and that the statute violated no provision either of the Federal or the State Constitution, but was a valid enactment of the Legislature, and, therefore, the Court affirmed the order for mandamus, the ticket to be good upon the trains limited to the railway lines of the defendant railroad company within the State of Michigan."

Page 686.

"If unhampered by contract, there is no doubt of the power of the State to provide by legislation for maximum rates of charges for railroad companies, subject to the condition that they must be such as will admit of the carrier earning a compensation that, under all the circumstances, shall be just to it and to the public, and whether they are or not is a judicial question. If the rates are fixed at an insufficient amount within the meaning of that term as given by the Courts, the law would be invalid, as amounting

to the taking of the property of the company without due process of law. *(Chicago & Grand Trunk Ry. vs. Wellman,* 143 U. S. 339, 344; *Reagan vs. Farmers' Loan & Trust Co.,* 154 U. S. 362, 399; *St. Louis & San Francisco Ry. Co. vs. Gill,* 156 U. S. 649; *Smyth vs. Ames,* 169 U. S. 466, 523.)"

Page 687.

"A railroad company, although a quasi-public corporation, and although it operates a public highway *(Cherokee Nation vs. Southern Kansas Ry.,* 135 U. S. 641; *Lake Shore, etc., Ry. vs. Ohio,* 173 U. S. 285, 301), has, nevertheless, rights which the Legislature cannot take away without a violation of the Federal Constitution, as stated in *Smyth vs. Ames,* 169 U. S. 466, 544. A corporation is a person within the protection of the Fourteenth Amendment. *(Minneapolis & St. Louis Railway vs. Beckwith,* 129 U. S. 26; *Smyth vs. Ames,* 169 U. S. 466, 522, 526.) Although it is under the governmental control, that control must be exercised with due regard to constitutional guarantees for the protection of its property.

"The question is presented, in this case, whether the Legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, with the limitations above stated, and having power to alter, amend or repeal their charters, within certain limitations, has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs, and to discriminate and make an exception in favor of certain persons, and give to them a right of transportation for a less sum than the general rate provided by law."

Page 690.

"The power of the Legislature to enact general laws regarding a company and its affairs does not

include the power to compel it to make an exception in favor of some particular class in the community, and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation."

Page 693.

"What right has the Legislature to take from the company the compensation it would otherwise receive for the use of its property in transporting an individual or classes of persons over its road, and compel it to transport them free or for a less sum than is provided for by the general law? Does not such an act, if enforced, take the property of the company without due process of law? We are convinced that the Legislature cannot thus interfere with the conduct of the affairs of the corporations.

"But it may be said that the Legislature would have the power to reduce the maximum charges for all to the same rate at which it provides for the purchase of the thousand-mile ticket; therefore, the company cannot be harmed, or its property taken without due process of law, when the Legislature only reduces the rates in favor of a few instead of in favor of all. It does not appear that the Legislature would have any right to make such an alteration. To do so might involve a reduction of rates to a point insufficient for the earning of the amount of remuneration to which a company is legally entitled under the decisions of this Court. In that case, reduction would be illegal."

Page 695.

"If the Legislature can interfere by directing the sale of tickets at less than the generally-established rate, it can compel the company to carry persons or classes free."

Page 694.

In this case the Court said:

> "The right to claim from the company transportation at reduced rates, by purchasing a certain amount of tickets, is classed as a convenience. As so defined, it would be more convenient if the right could be claimed without any compensation whatever."

In the case at bar, the Railroad Commission of Mississippi has pursued the "more convenient" course pointed out by this Court.

It may be of interest to note that the Supreme Court of Mississippi proceeds upon the theory that it is lawful to confiscate property in order to prevent discrimination, and, acting on this notion, has brushed aside as immaterial the conceded fact that the order of the Mississippi Railroad Commission requires the Alabama & Vicksburg Railway Company to haul freight at an actual loss. It is not the purpose of this brief to elaborate on this error of the Supreme Court of Mississippi.

It would be novel if a man's property could be confiscated because he was found guilty of some minor misdemeanor, such as fighting in a public street, for instance.

## IV.

**To enforce this flat rate of three and one-half cents would be denying to appellant the equal protection of the law.**

It is undisputed that the rate established by the order of the Mississippi Railroad Commission is not only the

lowest in the State, but is applicable to no other railroad in the State of Mississippi.

Printed Transcript of Record, pp. 65-66.

It appears that the findings of the Mississippi Courts are supported by testimony to the effect that the three and one-half cent rate is lower than the rate approved by the Railroad Commission of Mississippi on any other commodity for the same distance.

Printed Transcript of Record, 45.

That it is lower than the rates on the same commodities for the same distance in the States of Texas, Louisiana, Alabama, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, or Arkansas, in which States the rates range from nine cents to twenty-seven and one-half cents per hundred pounds, except in one instance—from Louisville to Henderson, Kentucky, a distance of 146 miles, with all-year-round competition on the Ohio River, where the rate is six cents per hundred pounds.

Printed Transcript of Record, 45.

That said three and one-half cent rate from Vicksburg to Meridian is lower than rates between all points on the Mississippi River having steamboat competition, the minimum rate of the steamboats being ten cents per hundred pounds.

Printed Transcript of Record, 45.

That, while it is true that the lowest rates in existence are made by schooners or small sailing vessels, the rate of three and one-half cents per hundred pounds contem-

plated by the said Railroad Commission is lower than any rate on the same commodity made in competition with these water craft.

Printed Transcript of Record, 45.

That schooners ply between New Orleans and Mandeville, Louisiana, the distance by rail being fifty-nine miles, and that the rail rate on grain is six cents, and on meal, hominy and grits in barrels the rate is seven and one-half cents per hundred pounds. That there is schooner competition between New Orleans and Bay St. Louis, Gulfport and Mobile, and that the rate on grain between the first two points mentioned is nine cents, and to Mobile ten cents, per hundred pounds from New Orleans.

Printed Transcript of Record, 45-46.

The following experts also testified that the three and one-half cent rate in question is the lowest rate on the same commodity on any railroad in the United States,

See affidavit of L. Green, for many years engaged in the freight departments of the railways of the United States, and, at the time of making said affidavit, occupying the position of assistant general freight agent, Southern Railway Company.

Printed Transcript of Record, 63.

To the same effect, see affidavit of C. B. Compton, traffic manager of the Louisville & Nashville Railroad Company, and for many years an expert in freight traffic matters.

Printed Transcript of Record, 63-4.

To the same effect, see affidavit of C. C. Cameron, freight agent of the Illinois Central Railroad, and for many years experienced in the freight service of railways of the United States.

Printed Transcript of Record, 64.

To the same effect, see affidavit of Haiden Miller, general freight agent of the Mobile & Ohio Railroad Company, and for many years experienced in the freight service of the railways of the United States.

Printed Transcript of Record, 65.

In addition to all of this, T. R. Maxwell, secretary of the Railroad Commission of the State of Mississippi, certifies that he is the custodian of the books and records of the Railroad Commission of the State of Mississippi, and has made diligent search for any order of said Railroad Commission applying to any other railroad, from one point on its line within the State of Mississippi to another point on its line within the State of Mississippi of equal distance, a rate as low as the rate of three and one-half cents per hundred pounds from Vicksburg to Meridian, fixed for the Alabama & Vicksburg Railway Company by the order of the said Commission of November 16, 1903. That rates for equal distances on all other lines of railroad in the State of Mississippi have not been changed, and that the said rate fixed for the Alabama & Vicksburg Railway Company is the only one which has been so reduced in the State of Mississippi.

Printed Transcript of Record, 65-6.

The opinions of experts, having experience and familiar with freight rates throughout the United States, are given, and they unanimously say that the rate in question is the lowest in the United States, and requires the carrier to perform the service at an actual loss. The calculations showing that the rate requires a haul below cost of movement do not include interest on bonds or dividends on stock.

The finding and the testimony that the rate in question is the lowest in the United States is of the highest importance, and such a finding was the turning point of the case of **Cotting vs. Godard, 183 U. S. 79.** In that case this Court said:

> "It was found, however, that the charges made by defendant were no greater (and in many instances, less) than those of any other stockyard in the country. Nothing is stated to outweigh the significance of that finding."
>
> **183 U. S. 97.**

If this Court is of the same opinion as when the *Cotting Case* was decided, the pregnant fact that the three and one-half cent rate now in question is the lowest anywhere must be conclusive of the case at bar.

The opinion of experts is also a powerful factor which did not appear in the *Minnesota Coal Case.* This Court has definitely decided that "the opinion of experts, familiar with railroad business, is competent testimony, and connot be disregarded."

> **Minneapolis, etc., R. Co. vs. Tompkins, 176 U. S. 167.**

This is a denial of equal protection of the law.

In **L. & N. R. Co. vs. McChord, 103 F. R. 217,** a statute of Kentucky was declared to be unconstitutional:

> "Because any order made by the Commission thereunder, fixing a rate, is not uniform in its operation throughout the State, but appies to one company alone, and thus denies to such company the equal protection of the laws." * * *
>
> **103 F. R. 217.**

Duty to this Court, as one of its officers and counsel, makes it proper to say that the above case was appealed, and the decree reversed, on the ground that the suit was prematurely brought.

This Court was careful to say, however:

> "We are not called on to dispose of other contentions of grave importance which were pressed in argument as if now requiring adjudication."
>
> **183 U. S. 483-502.**

It is, therefore, submitted with confidence that the rule of law on this point is actually as laid down in **103 F. R. 217,** and that it is unjust and unconstitutional to single out one railroad alone, in an entire State, and apply to that railroad, solely, a rate the very lowest anywhere, while all other roads in the entire State are exempted from that rate, and are permitted to charge much higher rates.

This question is conclusively settled by the case of **L. S. & M. S. R. Co. vs. Smith, 173 U. S. 684.**

That case is decisive of the case at bar, and, on account of its important bearing on the questions here involved, we deal with it under a separate heading, as follows:

**Fourteenth Amendment of Federal Constitution is violated by fixing a single rate on a single commodity for a single railroad in a State, said rate not affecting the public at large, but only a few persons or places. Fixing of rates in single instances is not legislation and it is beyond the power of the Legislature to do more than "make a general rule applicable in all cases and without discrimination in favor of or against any individual."**

**173 U. S. 691.**

The above proposition is important.

It means that the province of a Legislature is to legislate.

Its function is to make laws.

A law is a rule of conduct general in its application, governing many, not a few, affecting the public or large classes of the public, and the existence of society or the State as a whole.

A law has been defined as:

> "A general rule of human action, taking cognizance of external acts only, enforced by a definite authority, which authority is human, and among human authorities is that which is paramount in a political society. More briefly, a general rule of external human action enforced by a sovereign political authority."
>
> **Holland, Jur., 37.**
>
> **II Bouvier's Law. Dict., 144, Ed. 1897.**

"The idea of law has commonly been analyzed as composed of three elements: (1) A *command* of the lawgiver, which command must prescribe not a single act merely, but a series or class of acts." * * *

**Benth. Frag. on Gov.**
**Austin Prov. Jur.**
**Maine Anc. Law.**
**II Bouvier's Law Dict., 145, Ed. 1897.**

An act of a Legislature making it a misdemeanor for John Smith alone, out of a State's millions of inhabitants, to steal from the field, would not be a law.

Making rates is a legislative function.

**134 U. S. 418-458.**
**154 U. S. 362.**
**156 U. S. 649-663.**
**162 U. S. 184-196.**

But making a solitary rate for a solitary railroad, on a single commodity out of thousands, is not the exercise of a legislative function. We will show that this Court has so expressly decided.

There were 9,370 ratings in Official Classification Territory in 1902.

See p. 33, Part II, "A Forty-Year Review of Changes in Freight Rates," published by Interstate Commerce Commission.

The order of the Mississippi Railroad Commission only concerns one of these 9,370 items.

In 1904 there were 3,480.25 miles of railroad in the State of Mississippi.

Seventeenth Annual Report Interstate Commerce Commission of Statistics of Railways in United States, 1904.

The order of the Mississippi Railroad Commission only concerns 140 miles of railway in that State.

There are over 3,000 towns and cities in Mississippi.

Rand McNally & Co.'s enlarged Business Atlas, 1905, pp. 126, 127, 128, 129, 130.

The order of the Mississippi Railroad Commission only concerns two of these 3,000 towns and cities—to wit, Vicksburg and Meridian.

Surely such an order cannot be a law.

The making of an individual rate is "purely" "a matter of internal administration" of the railroad company, as this Court has said (**173 U. S. 697**). It is a property right belonging to the owners of the private property invested in the railroad.

It is a right protected by Amendment XIV of the Federal Constitution.

Of course, the rate must be reasonable. That is not disputed.

But by the action of the Mississippi Railroad Commission:

> "The affairs of the company are in this way taken out of its own management, not by any general law applicable to all, but by a discrimination made by law to which the company is made subject."
>
> **173 U. S. 697.**

The case at bar does not involve the question as to the right and power of a Legislature to make a schedule of maximum rates for one railway in a State different from another on account of its physical condition, comparative

volume of its business, etc., and is not to be confused with that question.

This is a case of fixing a single rate on a single commodity on a single railway for the benefit of a few merchants of a special class in only two towns in a State.

> "We cannot regard this exceptional legislation as the exercise of a lesser right which is included in the greater one to fix by statute maximum rates for railroad companies. The latter is a power to make a general rule applicable in all cases and without discrimination in favor of or against any individual. It is the power to declare a general law upon the subject of rates beyond which the company cannot go, but within which it is at liberty to conduct its work in such manner as may seem to it best suited for its prosperity and success. * * * It thus invades the general right of a company to conduct and manage its own affairs."
>
> **173 U. S. 691.**

We believe that this Court has definitely settled that the right of a railway company to "manage its own affairs," to conduct its "internal administration in regard to the details of its business," to control its property, subject to just laws of general application designed for safety of the public and the prevention of "extortion or unreasonable or illegal exactions," is a property right protected by the Federal Constitution.

> "It is a matter of right of the company to carry on and manage its concerns subject to the general law applicable to all which the Legislature may enact in the legal exercise of its power to legislate in regard to persons and things within its jurisdiction."
>
> **173 U. S. 684-697.**

The aggregate railway mileage in the United States on June 30, 1904, was 213,904.34 miles.

**Text of 17th An. Rep. I. C. C. Statistics Rys. U. S., p. 12.**

The total railway capital of the United States as of June 30, 1904, was $13,213,124,679.

**Text of 17th An. Rep. I. C. C. Statistics Rys. U. S., p. 56.**

It would be amazing if the Legislature could supersede all presidents, vice-presidents, general managers, traffic managers, superintendents, and others appointed by the owners of these railroads, and undertake to manage them in their most minute details, without taking over the properties and paying for them.

This would be confiscation on the most magnificent scale the world has ever known.

The germ of this ambitious thought is in the order of the Mississippi Railroad Commission, fixing this individual rate of three and one-half cents on grain.

The attempt of a Legislature, or of a Commission created by a Legislature, to do what was done in this case, raises a serious question, much larger than that of the mere business interests of the single railway company which is a party to this suit.

This Government was established to forever prohibit tyranny and individual abuse of power.

It was founded on the knowledge derived from the sad experience of mankind, that, while ideas, institutions, material conveniences and even the face of the land itself changes, human nature remains about the same.

The Founders of this Government proceeded upon the theory that human power was incapable of wisely exercising unlimited power. Hence, our Constitution.

This Court has repeatedly said:

> This is "a government of law, not a government of men."
>
> **169 U. S. 535.**

To insure against tyranny the Founders distributed legislative, executive and judicial functions so that these would never be combined in the same person.

It erected this Court to interpret and apply the Constitution and preserve and illuminate its beneficent principles.

It is for this Court to say what is a law and what is not a law; to point out what is an executive function and what is not; to state the scope of judicial authority and mark its limits.

The great and ineffably intricate and delicate duties of this Court have been performed so that the whole world can and does say, "Well done," and it is not hyperbole to add that the world wonders.

The problems of the present are as great as those of the past; and, if our country and its institutions are to prevail, it will be because of the patriotic labors, courage and wisdom of this Court.

It takes courage and patriotism to hew to the line in the face of public sentiment, but this Court has never failed.

These remarks are perhaps out of place in a brief, but counsel cannot help feeling that we are in a crisis of our affairs, and that the questions now before the country is whether the Constitution shall be preserved or destroyed.

There is a fury for regulation, and many things need improvement. It may be that great abuses exist which should be corrected. But it would be sacrificing the substance for the shadow to do so at the expense of the Constitution.

This Court is the only spot where the tide of error can be turned back.

The Constitution is here in the house of its guardians, and no one will be suffered to wound it.

It would debauch the public conscience to permit confiscation of private property in the slightest degree contrary to the principles of the Constitution.

If a Legislature or a Commission is permitted to take private property, or regulate private property, except in accordance with law, a blow is delivered at the stability of our Government—a blow most injurious to the people themselves.

We have reached a stage where the air needs clearing. The time is ripe for this Court to guide the country out of the prevalent confusion, and it is to this Court that the people look for light and the firm, unerring judgment and statesmanship which will now, as it has in the past, protect the people against mistakes whereby they themselves will suffer the greatest harm.

This tribunal is the only one which has now, or has ever had, the implicit confidence of the country.

This country relies on this Court alone to protect it against itself.

History contains nothing greater than this, unless it be that, in the past, this Court has already, as occasion arose, done the very thing, and justified and increased the confidence reposed in it.

If a Legislature or a board of gentlemen, however well-intentioned, could pass a rule forcing a solitary individual to surrender his labor or a portion of his property free to another, under the impression that such a rule is the exercise of a legislative function and in reality a law, then our form of government is a sham, and we have not progressed beyond those times when the will or even the wish of the King was law.

However, in so far as the case in hand is concerned, it has been decided and definitely settled that the making of a particular individual single rate by a Legislature or by a Commission is not the exercise of a legislative function, and is not a law, and that "the affairs of the company are in this way taken out of its own management," * * * and its property rights wrested from it contrary to the Constitution of the United States.

We quote fully from the opinion of this Court, conclusively settling this question:

> "The validity of this act is rested by the counsel for the defendant in error upon the proposition that the State Legislature has the power of regulation

over the corporations created by it, and, in cases of railroad corporations, the same power of regulation, and also full control over the subject of rates to be charged by them as carriers for the transportation of persons and property. Assuming that the State is not controlled by contract between itself and the railroad company, the question is: How far does the authority of the Legislature extend in a case where it has the power of regulation, and also the right to amend, alter or repeal the charter of a company, together with a general power to legislate upon the subject of rates and charges of all carriers? It has no right, even under such circumstances, to take away or destroy the property or annul the contracts of a railroad company with third persons. (*Greenwood vs. Freight Company*, 105 U. S. 13, 17; *Commonwealth vs. Essex County*, 13 Gray, 239; *People vs. O'Brien*, 111 N. Y. 1, 52; *Detroit vs. Detroit & Howland Plankroad*, 43 Mich. 140.)

"A railroad company, although a quasi-public corporation, and although it operates a public highway (*Cherokee Nation vs. Southern Kansas Railway*, 135 U. S. 641; *Lake Shore, etc., Railway vs. Ohio*, 173 U. S. 285, 301), has, nevertheless, rights which the Legislature cannot take away without a violation of the Federal Constitution, as stated in *Smyth vs. Ames*, 169 U. S. 466, 544. A corporation is a person within the protection of the Fourteenth Amendment. (*Minneapolis & St. Louis Railway vs. Beckwith*, 129 U. S. 26; *Smyth vs. Ames*, 169 U. S. 466, 522, 526.) Although it is under governmental control, that control must be exercised with due regard to constitutional guarantees for the protection of its property.

"The question is presented in this case whether the Legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, with

the limitations above stated, and having power to alter, amend or repeal their charters, within certain limitations, has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs and to discriminate and make an exception in favor of certain persons, and give to them a right of transportation for a less sum than the general rate provided by law.

"It is said that the power to create this exception is included in the greater power to fix rates generally; that, having the right to establish maximum rates, it, therefore, has power to lower those rates in certain cases and in favor of certain individuals, while maintaining them or permitting them to be maintained at a higher rate in all other cases. It is asserted, also, that this is only a proper and reasonable regulation.

"It does not seem to us that this claim is well founded. We cannot regard this exceptional legislation as the exercise of a lesser right which is included in the greater one to fix by statute maximum rates for railroad companies. The latter is a power to make a general rule applicable in all cases and without discrimination in favor of or against any individual. It is the power to declare a general law upon the subject of rates beyond which the company cannot go, but within which it is at liberty to conduct its work in such a manner as may seem to it best suited for its prosperity and success. This is a very different power from that exercised in the passage of this statute. The act is not a general law upon the subject of rates, establishing maximum rates which the company can in no case violate. The Legislature, having established such maximum as a general law, now assumes to interfere with the management of the company while conducting its affairs pursuant to and obeying the statute regulat-

ing rates and charges, and, notwithstanding such rates, it assumes to provide for a discrimination, an exception in favor of those who may desire and are able to purchase tickets at what might be called wholesale rates—a discrimination which operates in favor of the wholesale buyer, leaving the others subject to the general rule. And it assumes to regulate the time in which the tickets purchased shall be valid, and to lengthen it to double the period the railroad company has ever before provided. It thus invades the general right of a company to conduct and manage its own affairs, and compels it to give the use of its property for less than the general rate to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the company without due process of law. We speak of the general right of the company to conduct and manage its own affairs; but, at the same time, it is to be understood that the company is subject to the unquestioned jurisdiction of the Legislature in the exercise of its power to provide for the safety, the health and the convenience of the public, and to prevent improper exactions or extortionate charges from being made by the company.

"It is stated upon the part of the defendant in error that the act is a mere regulation of the public business which the Legislature has a right to regulate, and its apparent object is to promote the convenience of persons having occasion to travel on railroads and to reduce for them the cost of transportation; that its benefit to the public who are compelled to patronize railroads is unquestioned, that it brings the reduction of rates of two cents per mile within the reach of all persons who may have occasion to make only infrequent trips; and that there is no reason why the Legislature may not fix the period

of time within which the holder of the ticket shall be compelled to use it. The reduction of rates in favor of those purchasing this kind of ticket is thus justified by the reasons stated.

"The right to claim from the company transportation at reduced rates, by purchasing a certain amount of tickets, is classed as a convenience. As so defined, it would be more convenient if the right could be claimed without any compensation whatever. But such a right is not a convenience at all within the meaning of the term as used in relation to the subject of furnishing conveniences to the public. And, also, the convenience which the Legislature is to protect is not the convenience of a small portion only of the persons who may travel on the road, while refusing such alleged convenience to all others, nor is the right to obtain tickets for less than the general and otherwise lawful rate to be properly described as a convenience. If that were true, the granting of the right to some portion of the public to ride free on all trains and at all times might be so described. What is covered by the word 'convenience' it might be difficult to define for all cases, but we think it does not cover this case. An opportunity to purchase a thousand-mile ticket for less than the standard rate, we think, is improperly described as a convenience.

"The power of the Legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community, and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation. We do not deny the right of the Legislature to make all proper rules and regulations for the general conduct of the affairs of the company, relating to the

running of trains, the keeping of ticket offices open, and providing for the proper accommodation of the public.

"This act is not like one establishing certain hours in the day during which trains shall be run for a less charge than during the other hours. In such case, it is the establishing of maximum rates of fare for the whole public during those hours, and it is not a discrimination in favor of certain persons, by which they can obtain lower rates by purchasing a certain number of tickets, by reason of which the company is compelled to carry them at the reduced rate, and thus, in substance, to part with its property at a less sum than it would be otherwise entitled to charge. The power to compel the company to carry persons, under the circumstances as provided for in this act, for less than the usual rates, does not seem to be based upon any reason which has hitherto been regarded as sufficient to authorize an interference with the corporation, although a common carrier and a railroad.

"The act also compels the company to carry, not only those who choose to purchase these tickets, but their wives and children, and it makes the tickets good for two years from the time of the purchase. If the Legislature can, under the guise of regulation, provide that these tickets shall be good for two years, why can it not provide that they shall be good for five or ten, or even a longer term of years? It may be said that the regulation must provide for a reasonable term. But what is reasonable under these circumstances? Upon what basis is the reasonable character of the period to be judged? If two years would, and five years would not, be reasonable, why not? And, if five years would be reasonable, why would not ten? If the power exists at all, what are the factors which make it unreasonable to say that the tickets shall be valid for five or for ten years?

It may be said that circumstances can change within that time. That is true; but circumstances may change within two just as well as within five or ten years. There is no particular time in regard to which it may be said in advance, and as a legal conclusion, that circumstances will not change. And can the validity of the regulation be made to depend upon what may happen in the future during the running of the time in which the Legislature has decreed the company shall carry the purchaser of the ticket? Regulations for maximum rates for present transportation of persons or property bear no resemblance to those which assume to provide for the purchase of tickets in quantities at a lower than the general rate, and to provide that they shall be good for years to come. This is not fixing maximum rates, nor is it proper regulation. It is an illegal and unjustifiable interference with the rights of the company.

"If this power exist, it must include the right of the Legislature, after establishing maximum freight rates, to also direct the company to charge less for carrying freight where the party offering it sends a certain amount, and to carry it at that rate for the next two or five or ten years. Is that an exercise of the power to establish maximum freight rates? Is it a valid exercise of the power to regulate the affairs of a corporation? The Legislature would thus permit, not only discrimination in favor of the larger freighter as against the smaller one, but would compel it. If the general power exist, then the Legislature can direct the company to charge smaller rates for clergymen or doctors, for lawyers or farmers or school teachers, for excursions, for church conventions, political conventions, or for all or any of the various bodies that might desire to ride at any particular time or to any particular place.

"If the Legislature can interfere by directing the sale of tickets at less than the generally-established

rate, it can compel the company to carry certain persons or classes free. If the maximum rates are too high in the judgment of the Legislature, it may lower them, provided it does not make them unreasonably low, as that term is understood in the law; but it cannot enact a law making maximum rates, and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper. What right has the Legislature to take from the company the compensation it would otherwise receive for the use of its property in transporting an individual or classes of persons over its road, and compel it to transport them free or for a less sum than is provided for by the general law? Does not such an act, if enforced, take the property of the company without due process of law? We are convinced that the Legislature cannot thus interfere with the conduct of the affairs of corporations.

"But it may be said that, as the Legislature would have the power to reduce the maximum charges for all to the same rate at which it provides for the purchase of the thousand-mile ticket, the company cannot be harmed or its property taken without due process of law when the Legislature only reduces the rates in favor of a few instead of in favor of all. It does not appear that the Legislature would have any right to make such an alteration. To do so might involve a reduction of rates to a point insufficient for the earning of the amount of remuneration to which a company is legally entitled under the decisions of this Court. In that case, reduction would be illegal. For the purpose of upholding this discriminatory legislation, we are not to assume that the exercise of the power of the Legislature to make, in this instance, a reduction of rates as to all would be legal, and, therefore, a partial reduction must be also legal. *Prima facie,* the maximum rates, as fixed

by the Legislature, are reasonable. This, of course, applies to rates actually fixed by that body.

"There is no presumption, however, that certain named rates, which, it is said, the Legislature might fix, but which it has not, would, in case it did so fix them, be reasonable and valid. That it has not so fixed them affords a presumption that they would be invalid, and that presumption would remain until the Legislature actually enacted the reduction. At any rate, there is no foundation for a presumption of validity in case it did so enact, in order to base the argument that a partial reduction, by means of this discrimination, is, therefore, also valid. And this argument also loses sight of the distinction we made above between the two cases of a general establishment of maximum rates and the enactment of discriminatory, exceptional and partial legislation upon the subject of the sale of tickets to individuals willing and able to purchase a quantity at any one time. The latter is not an exercise of the power to establish maximum rates.

"True it is that the railroad company exercises a public franchise, and that its occupation is of a public nature, and the public, therefore, has a certain interest in, and rights connected with, the property, as was held in *Munn vs. Illinois,* 94 U. S. 113, 125, and the other kindred cases. The Legislature has the power to secure to the public the services of the corporation for reasonable compensation, so that the public shall be exempted from unreasonable exactions, and it has also the authority to pass such laws as shall tend to secure the safety, convenience, comfort and health of its patrons and of the public with regard to the railroad. But in all this we find it neither necessary nor appropriate, in order that the Legislature may exercise its full right over these corporations, to make such a regulation as this, which discriminates against it and in favor of certain indi-

viduals, without any reasonable basis therefor, and which is not the fixing of maximum rates or the exercise of any such power.

"The Legislature having fixed a maximum rate at what must be presumed, *prima facie*, to be also a reasonable rate, we think the company then has the right to insist that all persons shall be compelled to pay alike; that no discrimination against it, in favor of certain classes of married men or families, excursionists or others, shall be made by the Legislature. If otherwise, then the company is compelled, at the caprice or whim of the Legislature, to make such exceptions as it may think proper, and to carry the excepted persons at less than the usual and legal rates, and thus to part in their favor with its property without that compensation to which it is entitled from all others, and, therefore, to part with its property without due process of law. The affairs of the company are in this way taken out of its own management, not by any general law applicable to all, but by a discrimination made by law to which the company is made subject. Whether an act of this nature shall be passed or not is not a matter of policy to be decided by the Legislature. It is a matter of right to the company to carry on and manage its concerns subject to the general law applicable to all, which the Legislature may enact in the legal exercise of its powers to legislate in regard to persons and things within its jurisdiction.

"This case differs from that which has just been decided (*Lake Shore, etc., Company vs. Ohio*, 173 U. S. 285). In that case the convenience of the public in the State was the basis of the decision, regard being also had to the convenience of the public outside or beyond the State. It included all the public who desired to ride from the stations provided for in the act, and the convenience to the people in taking a train at these stations was held by this

Court to be so substantial as to justify the enactment in question.

"But in this case it is not a question of convenience at all within the proper meaning of that term. Aside from the rate at which the ticket may be purchased, the convenience of purchasing this kind of a ticket is so small that the right to enact the law cannot be founded upon it. It is no answer to the objection to this legislation to say that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a Legislature. Persons may voluntarily contract to do what no Legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the Legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business, which it has the right to change at any moment, furnishes no argument for the existence of a power in a Legislature to pass a statute in relation to the same business imposing additional burdens upon the company.

"To say that the Legislature has power to absolutely repeal the charter of the company, and thus to terminate its legal existence, does not answer the objection that this particular exercise of legislative power is neither necessary nor appropriate to carry into execution any valid power of the State over the conduct of the business of its creature. To terminate the charter, and thus end the legal life of the company, does not take away its property, but, on the contrary, leaves it all to the shareholders of the company after the payment of its debts.

"In *Attorney General vs. Old Colony Railroad*, 160 Mass. 62, the statute required every railroad

corporation in the Commonwealth to have on sale certain tickets which should be received for fare on all railroad lines in the Commonwealth, etc., and the statute was held invalid. The precise question involved in this case was not there presented, and the Court said it was not necessary or practicable to attempt to determine in that case just how far the Legislature could go by way of regulating the business of railroad companies, or just where were the limits of its power.

"The power to enact legislation of this character cannot be founded upon the mere fact that the thing affected is a corporation, even when the Legislature has the power to alter, amend or repeal the charter thereof. The power to alter or amend does not extend to the taking of the property of the corporation, either by confiscation or, indirectly, by other means. The authority to legislate in regard to rates comes from the power to prevent extortion or unreasonable charges or exactions by common carriers or others exercising a calling and using their property in a manner in which the public have an interest.

"In this case there is not an exercise of the power to fix maximum rates. There is not the exercise of the acknowledged power to legislate so as to prevent extortion or unreasonable or illegal exactions. The fixing of the maximum rate does that. It is a pure, bald and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road, and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time. It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who, in the legislative judgment, should be carried at a less expense than the other members of the community. There is no reasonable

ground upon which the legislation can be rested, unless the simple decision of the Legislature should be held to constitute such reason. Whether the Legislature might not, in the fair exercise of its power of regulation, provide that ordinary tickets purchased from the company should be good for a certain reasonable time, is not a question which is now before us, and we need not express any opinion in regard to it.

"In holding this legislation a violation of that part of the Constitution of the United States which forbids the taking of property without due process of law, and requires the equal protection of the laws, we are not, as we have stated, thereby interfering with the power of the Legislature over railroads, as corporations or common carriers, to so legislate as to fix maximum rates, to prevent extortion or undue charges, and to promote the safety, health, convenience or proper protection of the public. We say this particular piece of legislation does not partake of the character of legislation fairly or reasonably necessary to attain any of those objects, and that it does violate the Federal Constitution as above stated."

**Lake Shore & Michigan Southern Railway Co. vs. Smith, 173 U. S. 686-699.**

V.

**The order of the Mississippi Railroad Commission directly interferes with interstate commerce.**

We have pointed out some respects in which the order of the Mississippi Railroad Commission, issued November 16, 1902 (Printed Transcript of Record, p. 17), constitutes a direct interference with, and regulation of,

interstate commerce. In addition thereto, we call attention to the following language of the Supreme Court of Mississippi:

> "The practical operation of the plan being thus demonstrated as causing a gross discrimination, the next question presented is whether the State Railroad Commission was vested with authority to pass the order, the enforcement of which is now assailed, the effect of the order being simply to convert the then existing so-called rebilling rate into an open or flat rate, with the result that all dealers handling grain or grain products in carload lots could enjoy the rate then in force from Vicksburg to Meridian. It will be noted that the rates then in existence were left undisturbed, the only change wrought by the order being to abolish the condition precedent, insisted on by the appellant, restricting the rate to the exclusive benefit of such as had received previous and equal shipments over its associated line. The question propounded is easy of solution in view of the provisions of Section 4297, Code 1892. That section authorizes the Commission to docket, hear and determine all complaints made of any tariff of rates, joint or several, made by any railroad, or fixed or approved by the Commission, on the ground that the charges are for more than just compensation, or that such charges, or any of them, amount to, or operate so as to effect, unjust discrimination. And when, by regular procedure and full investigation, and after hearing proof, the Commission is satisfied of the truth of the statement and the justice of the complaint, it is given express authority to give notice to the railroads concerned of any change deemed proper, and to require compliance with such orders. That is the exact legal status of the order presented to us for review. A tariff or rate had been established by the voluntary action of the railroad com-

pany; that tariff operated to work unjust discrimination; complaint was made; the proof fully supports the justice and the truth of the grounds on which the complaint is based; that proof satisfied the Chancellor, and it satisfies us, that the so-called rebilling arrangement was simply a cloak assumed to conceal an arrangement which, while ostensibly granted as a concession to the Vicksburg dealers, was, in truth, devised for the ulterior purpose of fostering the interests of the Vicksburg, Shreveport & Pacific Railroad Company, and, perhaps, as it is argued, to maintain present rates to Meridian for the benefit of an associated and connecting railroad at that point. In such state of case, the power of the Commission to make any change which justice may demand is unquestionably so well established that we deem any citation of authorities, further than a rerefence to the briefs of counsel, a work of supererogation."

Printed Transcript of Record, 105, 106.

It will be noted that the Court finds:

(*a*) The effect of the order was simply to convert the then existing so-called rebilling rate into an open flat rate.

(*b*) The only change wrought by the order was to abolish the condition precedent, insisted on by appellant, restricting the rate to the exclusive benefit of such as had received previous and equal shipments over its associated line.

(*c*) That the law of Mississippi authorizes the Commission to hear and determine complaints as to unjust discrimination or unreasonableness of any tariff of rates, *joint* or several, made by any railroad.

(*d*) That the Railroad Commission may order a change in rates and enforce compliance with its order.

(*e*) A tariff or rate had been established by the voluntary action of appellant.

(*f*) That tariff operated to work unjust discrimination, in that—

The so-called rebilling arrangement was simply a cloak to conceal an arrangement devised for the ulterior purpose of fostering the interests of the Vicksburg, Shreveport & Pacific Railroad Company.

As already pointed out in stating the case, it is undisputed that the traffic arrangement between the Mobile & Ohio Railroad, Vicksburg, Shreveport & Pacific Railway Company and the Alabama & Vicksburg Railway Company, as to division of such through rates on grain and grain products, is on a mileage basis, with through rates so adjusted as in no case to allow the Alabama & Vicksburg Railway less than a minimum of three and one-half cents per hundred pounds between Vicksburg and Meridian, and that no grain or grain products originate at Vicksburg, but all such freight comes from the far Northwest.

Printed Transcript, 50-60.

The above-cited passage from the opinion of the Supreme Court of Mississippi finds as a fact that there was a joint through tariff and "so-called rebilling arrangement" between the appellant, the Alabama & Vicksburg Railway Company, and the Vicksburg, Shreveport & Pacific Railroad Company, and "that tariff operated to work unjust discrimination."

As to "that tariff," "complaint was made."

As to "that tariff," the Railroad Commission of Mississippi passed an order.

As to "that tariff," "the effect of the order" was "simply to convert the then existing so-called rebilling rate into an open flat rate." * * *

As already stated, by reference to Diagram No. 2, at page — of this brief, it will be seen that the Vicksburg, Shreveport & Pacific Railroad runs wholly in the State of Louisiana, between the Mississippi and Red Rivers.

As already stated, "that tariff" relates solely to grain and grain products, none of which originate at Vicksburg, but all of which originate in the great grain-growing regions of the West and Northwest. Therefore, it is clear "that tariff" is a joint through interstate tariff, made by and between railroads located in different States, as to traffic traveling hundreds of miles through a long series of distant States.

It follows that the order of the Railroad Commission of Mississippi directly interferes with and regulates interstate commerce by changing "that tariff"—a joint through interstate tariff—"the effect of the order being simply to convert the then existing so-called rebilling rate into an open flat rate," * * * to use the phraseology of the Mississippi Supreme Court.

At this juncture it is proper to point out a further effect of this order.

It practically forces the Alabama & Vicksburg Railway into joint through interstate tariffs, rates and divisions

with all lines reaching Vicksburg by rail or river, whether or not it desires such partnership arrangements, and this result constitutes an additional interference with interstate commerce.

It has been decided in a multitude of cases that it is perfectly lawful, and in the highest interest of commerce and the public, and in no way discriminatory, for carriers to form exclusive connections and make joint through rates and tariffs with one or more carriers to the exclusion of others.

**Gulf C. & S. F. R. vs. Miami S. S. Co., 30 C. C. A. 142, 86 F. R. 407.**
**K. & I. Bridge Co. vs. L. & N. R. Co., 37 F. R. 407.**
**Oregon Short Line vs. Northern P. R. Co., 51 F. R. 465.**
**Ilwaco R. & Nav. Co. vs. Oregon Short Line, 6 C. C. A. 495, 57 F. R. 673.**
**A., T. & S. F. R. Co. vs. Denver N. O. R., 110 U. S. 667.**
**Express Cases, 117 U. S. 1.**
**L. & N. R. Co. vs. West Coast Naval Stores Co., 198 U. S. 483.**

The above cases determine, as a matter of law, that exclusive joint through arrangements do not constitute any undue discrimination at all. Furthermore, as a matter of fact, as we have seen in stating this case, a "rebilling," "reconsigning," "compressing in transit," etc., arrangement constitutes no discrimination, as is lucidly explained by the Interstate Commerce Commission in the passage previously quoted.

But conceding, for the purposes of argument only, that undue discrimination is created by confining the interstate rebilling arrangement in question exclusively to the Vicksburg, Shreveport & Pacific Railway and the Mobile & Ohio Railroad Company, it is not within the province of the Mississippi Railroad Commission to attempt a correction of such discrimination as to interstate traffic.

> "But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated."
>
> **118 U. S. 557-577.**

Power to correct undue discriminations as to interstate traffic has been vested by Congress solely in the machinery created by the Act to Regulate Commerce, and the Mississippi Railroad Commission has no jurisdiction in the premises.

> **G. C. & F. R. Co. vs. Hefley & Lewis, 158 U. S. 910.**
>
> **L. & N. R. Co. vs. Eubank, 184 U. S. 27.**

A further feature of the order, which discloses that it is an interference with interstate commerce, consists of the following: Section 4290 of the Mississippi Code (printed in full as Appendix hereto) is the source of the

Commission's power to fix and regulate rates, and requires the railroads to furnish the Commission their tariffs of interstate as well as domestic charges, and requires the Commission, in fixing and regulating domestic charges, to "*take into consideration * * * the entire business of the railroad and its earnings from all kinds of traffic.*" The words, "entire business of the railroad," include, of course, its interstate business, and its "earnings from all kinds of traffic" embrace its earnings from interstate traffic.

It is settled law that State Railroad Commissions, in fixing intrastate rates, cannot take into consideration the interstate business of a railway company.

**Smyth vs. Ames, 169 U. S. 466.**
**Northern Pac. Ry. Co. vs. Keyes, 91 F. R. 47.**

The rate now in question was made by the Railroad Commission of the State of Mississippi in the manner prescribed by the statute of Mississippi; that is to say, by taking into consideration both the interstate and the intrastate business of the railway company, together with its interstate and intrastate earnings. Indeed, this is admitted in the answer of the Railroad Commission.

> "Responding to paragraph 10 of the complaint, respondent says that, in fixing the rate complained of, *it did take into consideration the entire business of the complainant railroad and its earnings from all kinds of traffic.*" * * *
>
> Section 7 of the Answer.
> Printed Transcript of Record, 23.

In fact, this is the only way in which the Railroad Commission of Mississippi can make any rate at all under the statute of Mississippi.

And the Chancellor says:

> "But, even if it is true that its local business does not pay, due regard must be had to the rights of the public; and, *where a profit is shown on the entire business of the company, its local business* cannot be made to pay by permitting the company to charge unreasonably high rates *for the purpose of making a profit on the local business.*" (My italics.)
>
> Transcript, p. 97.

*Mr. Harvey,* president, says:

> "The reports of the Alabama & Vicksburg Railway Company show not quite thirty-seven per cent. of its total receipts are derived from business within the State of Mississippi, and a little over sixty-three per cent. from interstate traffic. *The proportion of the receipts derived from the State traffic is less than one-half the cost of operating and maintaining the property, and does not equal the cost of maintenance.*"
>
> Transcript, p. 30.

*Mr. Jones,* auditor, says:

> "The actual cost of operation and appurtenances for the last twelve months was $890,382; *not quite thirty-seven per cent. of the total receipts is derived from State business, and a little over sixty-three per cent. from interstate traffic.*
>
> "*The proportion of the receipts derived from intrastate is less than one-half of the cost of operating and sustaining the property, and does not amount to the cost of maintenance.*"
>
> Transcript, pp. 13 to 16.

And these statements are not disputed by any witness.

It may, perhaps, be well to point out an interesting error on the part of the Supreme Court of Mississippi. At page 106 of the transcript it will be noted that, in the opinion of the Supreme Court of Mississippi, the following language appears:

> "To this argument it is replied by appellee that it is not shown with any degree of certainty the proportionate amount of the gross operating expenses of the railroad company incurred on account of intrastate business, but this amount is only arrived at by estimation, and, therefore, this Court cannot say as a matter of fact, in the absence of positive proof, that the intrastate business of the appellant does result in a net annual loss; and, as the findings of the Railroad Commission are dealt with as being, *prima facie*, correct, in the absence of direct proof of error, this Court will affirm its findings of fact."
>
> Printed Transcript of Record, 106.

At page 17 of the Transcript of Record, the entire order of the Mississippi Railroad Commission appears, and is entitled "*In the Matter of the Petition of the Chicago Board of Trade Against The Alabama & Vicksburg Railroad Company.*" The entire order does not occupy a page of the transcript, and it will be searched in vain for any "findings of fact" whatever, either *prima facie* correct or *prima facie* incorrect. (See complete order, printed as an appendix to this brief.)

In other words, singular as it may seem, in view of the diffidence expressed on the part of the Mississippi Supreme Court as to modifying the "findings of the Rail-

road Commission," there are actually in existence no "findings" at all of the Mississippi Railroad Commission in this case, nor have there ever been any in existence. It would seem that there ought to be some way, and this appellant, the Alabama & Vicksburg Railway Company, sincerely hopes that there is a way, in which its property may be protected from confiscation under the order of the Mississippi Railroad Commission, reducing its rates below cost in the proceeding purporting to be brought by the Chicago Board of Trade, although it was actually brought by the Meridian Board of Trade, wherein the Commission made no findings of fact at all, *prima facie* correct or otherwise, and that it will not be obliged to suffer the loss of its property because of the delicacy felt by the Mississippi Supreme Court in disturbing "findings" that never existed.

Respectfully submitted,

HARRY H. HALL,
*Counsel for Alabama & Vicksburg Railway Company.*

McWillie & Thompson,
*Associate Counsel.*

# APPENDIX.

"In the Matter of the Petition of The Chicago Board of Trade against The Alabama & Vicksburg Railroad Company.

"Be it remembered that on this the 19th day of October, 1903, at a regular meeting of the Mississippi Railroad Commission, held at the time and place provided by law, came on to be heard the petition of the Board of Trade of the City of Meridian for a flat rate of three and one-half cents per hundred pounds on grain and grain products from Vicksburg to Meridian, Mississippi, over the Alabama & Vicksburg Railroad, and upon the plea or answer of said railroad company to the said petition. The matter having been heard upon said petition and plea, and upon the pleadings and evidence, oral and documentary, offered by either side, and the arguments of counsel for the petition and for the railroad company as well, the Commission took said matter under advisement and consideration, all parties agreeing thereto.

"Now, on the 16th day of November, 1903, the Commission, having duly considered the said matter now here in session as aforesaid, finds, orders and adjudges as follows:

"First. That the prayer of the said petition should be, and is hereby, granted.

"SECOND. That the Alabama & Vicksburg Railway Company is hereby ordered to put into effect over its line of road from Vicksburg, Mississippi, to Meridian, Mississippi, inclusive of both of said cities, from and after December 8, 1903, a flat rate of three and one-half cents per hundred pounds on grain and grain products, and no more.

"THIRD. That the clerk of this Commission certify this order to said railroad company, and give due notice thereof to said company as required by law.

JNO. A. WEBB,

*"Secretary."*

Printed Transcript of Record, 17, 18.

SECTION 4290 OF CODE OF MISSISSIPPI.

"TARIFFS SUBMITTED; COMMISSION TO FIX RATES."

"4290. It is the duty of every railroad to furnish to the Commission its tariff of charges for transporting passengers and freight from point to point within, and from points without to points within, and from points within to points without, the State, and including all joint tariffs with connecting lines; and the Commission shall revise such of said tariffs as are not subject to the exclusive regulation of Congress, and determine whether or not, and in what particular, any of the charges are more than reasonable compensation for the services to be rendered, and whether or not discrimination be made improperly against any person, corporation or locality; and it shall require the proper corrections to be made;

and, when the tariffs have been corrected, the Commission shall append to each its certificate of approval; and the Commission shall fix and regulate tariffs of charges for all railroads which fail to furnish their tariffs as required. In revising, fixing and regulating charges for transportation, the Commission shall take into consideration the character and nature of the service to be rendered, and the entire business of the railroad, and its earnings from all kinds of traffic; and shall so revise, fix and regulate the charges as to allow reasonable compensation for the services to be rendered. It shall exercise a watchful and careful supervision over the tariffs of charges of every railroad, and shall revise the same from time to time, as justice to the public and the railroad may require, and shall increase or reduce any of the rates as experience and business operations show to be just. In fixing joint tariffs of rates for connecting lines, the Commission shall determine the proportion to be charged by each of the railroads. The Commission shall regulate and fix the rates to be charged on short hauls in excess of what may be charged on long hauls; and it shall determine in all cases whether the circumstances and conditions be or be not substantially similar."

SECTION 4297, CODE OF MISSISSIPPI.

"COMPLAINTS OF SCHEDULE AND TARIFF; WHAT TO CONTAIN; NOTICE, HEARING AND DETERMINATION."

"4297. The Commission shall docket, hear and determine all complaints made of any time schedule, or of the

tariff of rates, joint or several, made by any railroad, or fixed or approved by the Commission on the ground that the same, in any respect is, in the case of a time schedule, unnecessarily inconvenient for the public, or in the case of a tariff of rates, that the charges are far more than just compensation, or that such charges, or any of them, amount to or operate so as to effect unjust discrimination. The complaint must be in writing, and specify grounds of complaint, or the items in the tariff against which complaint is made; and, if it appear to the Commission that the matter ought to be investigated, the Commission shall forthwith furnish to the railroad a copy of the complaint, together with notice of the time and place of hearing; and, at the time and place named, the Commission shall hear the parties to the controversy, in person or by counsel, or both, and such evidence as may be offered, oral, or in writing, and may examine witnesses on oath, conforming to the mode of proceedings, as nearly as may be convenient, to that pursued by arbitrators, giving such time and latitude to each side, and regulating the opening and closing of any argument, as the Commission may consider best adapted to arrive at the truth; and, when the hearing is concluded, the Commission shall give notice of any change, deemed proper by it to be made, to the railroad, and require compliance with its order."

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JAMES H. McKENNEY

IN THE

# Supreme Court of the United States.

October Term, 1906.

No. 97.

ALABAMA & VICKSBURG RAILWAY COMPANY *et al.*,
*Plaintiffs in Error.*

*Versus*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
*Defendant in Error.*

## SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

HARRY H. HALL,
*Counsel for Alabama & Vicksburg Railway Company.*

McWILLIE & THOMPSON
*Associate Counsel.*

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*Defendant in Error.*

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## SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

During the argument a Justice of this Court put the following question, as we recollect it:

> *"Assuming that a merchant in Vicksburg brought in ten cars of grain from St. Louis, by the Yazoo & Mississippi Valley Railroad, and another merchant brought into Vicksburg ten cars of grain from St. Louis over the Vicksburg, Shreveport and Pacific Railway; further assuming that both merchants desired to ship some or all of this grain from Vicksburg to Meridian. The merchant who brought in his grain over the Vicksburg, Shreveport and Pacific Railway could forward his ten cars on the balance of the through rate, to-wit: 3 1-2 cents per 100 lbs, whereas, the merchant who had brought in his ten cars by the Valley*

*Railroad could not forward them at 3 1-2 cents, but would have to pay a greater rate, in this situation would it not be justice to order that both merchants should have open and available to them the same rate of 3 1-2 cents, and is it not undue discrimination to deny to the merchant who uses the Valley Road the same rate which is available to the merchant who uses the V. S. & P. R. R.?"*

The answer to this question depends upon the facts.

Unjust discrimination is always a question of fact, as this Court has definitely decided in the Import Rate Case.

Texas & Pacific Ry. vs. I. C. C., 162 U. S. 197.

The Import Rate Case presented the following situation:

A charge of $3.70 per hundred pounds was made upon domestic traffic originating at New Orleans and destined to San Francisco, whereas a charge of 80 cents per hundred pounds from New Orleans to San Francisco was made upon imported traffic originating at Liverpool and passing through New Orleans destined to San Francisco. The goods, both foreign and domestic, might and did travel in the same cars from New Orleans to San Francisco.

The Interstate Commerce Commission held that this was undue discrimination against the local shipment originating at New Orleans and an unjust preference to the foreign shipment.

3 I. C. R. 417; 52 F. R. 187; 57 F. R., 948.

Upon great consideration this Court held that there was no undue discrimination involved in this transaction.

Texas & Pacific Railway Co. vs. I. C. C., 162 U. S. 197.

The mere fact therefore that the Vicksburg local shipper will pay more on a shipment originating at Vicksburg and

destined to Meridian than 3 1-2 cents per hundred pounds, the sum paid as part of the through shipment, would not constitute undue discrimination.

In the Import Rate Case the goods had to be unloaded from the ship at New Orleans and reloaded on the cars at New Orleans. It was, therefore, contended that local goods originating at New Orleans, inasmuch as they had to be loaded on the cars and had to be carried forward in the same cars, were in the identical situation in these respects as the imported goods. So it is urged here that the local shipment of grain originating at Vicksburg has to be loaded on the cars equally as well as the through shipment which has been stopped off at Vicksburg, and that both shipments are in identically the same situation and it is undue discrimination for one to be transported on to Meridian at a less rate than the other.

The Import Rate Case effectually disposes of this contention and we will not elaborate further on this phase of the subject, but will merely refer to the Import Rate Case which is conclusive.

The principle decided by the United States Supreme Court in the Import Rate Case has been applied by the Interstate Commerce Commission to export traffic and the Commission has held that it is no undue discrimination to charge 17 cents from Chicago to New York on domestic grain while charging 12 cents from Chicago to New York on export grain.

> See elaborate opinion of the Interstate Commerce Commission *in re* Export and Domestic Rates, 8 I. C. R., 214.

In this case the Commission also sustained three separate and distinct rates between Kansas City and New Orleans, holding that there was no undue discrimination in maintaining these different rates. Wheat sent from Kansas City to New Orleans for domestic consumption was charged 27

cents per hundred pounds. Wheat originating at Kansas City and sent to New Orleans for export was charged 21 cents per hundred pounds. Wheat received from a connection at Kansas City and proceeding on to New Orleans for export was charged 10 cents per hundred pounds.

The mere fact that there was a difference in the rates was held by the Commission not to constitute undue discrimination, and that a certain difference was absolutely necessary to keep the port of New Orleans and other ports, such as Boston, open for export traffic.

The Commission confirmed fully the principle that some difference was warranted, but expressed doubt as to the amount or degree of difference in some of the instances before it.

A similar ruling was made by the Commission in the case of Edward Kemble vs. B. & A. R. R., *et al.*, 8 I. C. R. 110, and it was held that the mere fact that there was a higher rate on grain between Chicago and Boston when said grain was used for domestic consumption, than on the same grain between Chicago and Boston when for export constituted no undue discrimination.

In the case of Interstate Commerce Commission vs. B. & O. R. R., 145 U. S. 263, Mr. Justice Brown cited with approval passages from the opinion of Judge Jackson in the Court below, and amongst other things said:

> "It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust or unreasonable."
>
> I. C. C. vs. B. & O. R. R., 145 U. S. 263, 276.

Again speaking of the sale of a ticket for a number of passengers at a less rate than for a single passenger, this Court said:

> " * * * It does not operate to the prejudice of the single passenger, who can not be said to be injured by the fact that another is able in a particular instance to travel at a less rate than he. If it operates injurious-

> ly toward anyone it is the rival road, which has not adopted corresponding rates; but, as before observed, it was not the design of the Act to stifle competition, *nor is there any legal injustice in one person procuring a particular service cheaper than another.* * * * If these tickets were withdrawn, the defendant road would lose a large amount of travel, and the single trip passenger would gain absolutely nothing." (Italics ours.)
>
> I. C. C. vs. B. & O. R. R., 145 U. S. 263, 280-281.

This Court used the following language in the Import Rate Case:

> "The 6th section of the Act of Congress, July 1, 1862, relative to the Union Pacific Railroad Company, provided that the Government shall at all times have the preference in the use of the railroad 'at fair and reasonable rates of compensation, not to exceed the amount paid by private parties for the same kind of service.' In the case of Union P. R. Co. vs. United States, 117 U. S. 355, it was, in effect, held that the service rendered by a railway company in transporting local passengers from one point on its line to another is not identical with the service rendered in transporting through passengers over the same rails."
>
> T. & P. R. Co. vs. I. C. C., 162 U. S. 197, 231.

All the cases were reviewed in the Import Rate Case and it has been thoroughly established that the mere fact that a greater charge is made between two points for transporting an article or passenger in the same car does not in itself constitute undue discrimination, but that all the circumstances surrounding the traffic must be taken into consideration.

These circumstances were fully set forth in the Import Rate Case. And it was there laid down that in order to determine whether a certain charge constituted undue discrimination as compared with another charge, it was necessary and proper to take into consideration

"Besides the mere difference in charges, various elements, such as the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the relative cost of the services and profit to the company, and the situation and circumstances of the respective customers with reference to each other as competitive or otherwise."

162 U. S. 232.

This Court in said Import Rate Case repeatedly stated that in deciding such a question as this, it was necessary for the tribunal to consider:

(1) The legitimate interest of the carriers.

(2) The legitimate interests of the traders and shippers.

(3) The welfare of the various communities involved.

(4) The welfare of the localities where the goods are delivered.

(5) The welfare of the communities which are in the locality of the place of shipment.

(6) Competition that affects rates.

(7) The fact that goods would go by other competitive routes should be considered.

(8) The fair interests of the carriers affected.

(9) The welfare of the community which is to receive and consume the commodities are to be considered.

162 U. S. 233, 234.

Looking at the transaction then in the light of all these facts it appears

(1) That the interest of the producer in the far West is conserved by low rates on grain brought about by "rebilling," "reconsigning," "divisions of through rates," "milling in transit arrangements," etc. In other words any arrangements permitting grain to move on a low rate from point of production to point of consumption is in the interest of the producer.

(2) Looking to the interests of the consumer such arrangements are calculated to benefit him, for they usually result in lower prices.

(3) Looking to the interests of the particular locality which in this case is Vicksburg, it undoubtedly is benefited by the arrangements, as otherwise the grain would not be rehandled at Vicksburg, but would move right on or take other routes, and this particular trade would be lost to Vicksburg. Just as New Orleans and Boston would be closed for the export trade of grain without the rebilling arrangements existing there.

(4) The fair interest of the carrier should likewise be considered and it is quite proper for the Alabama & Vicksburg Railway Company to make arrangements by which grain could be brought over a line with which it has entered into through rates and divisions such as the Vicksburg, Shreveport and Pacific Railroad, instead of some rival line like the Yazoo and Mississippi Valley Railroad. If the same arrangement should be enforced between the Alabama and Vicksburg and the Yazoo & Mississippi Valley Railroad as now exists with the Vicksburg, Shreveport and Pacific Railroad, it is probable that grain from St. Louis would go over this rival line and be lost to the Vicksburg, Shreveport and Pacific Railroad.

It is likewise probable that rival competing water lines operating on the river would take the grain from the line now formed by the Alabama and Vicksburg and the Vicksburg, Shreveport and Pacific. It is certainly not to the interest of these latter carriers that this result should follow, and that fact must be considered under the Import Rate Case.

It must be always borne in mind that the present arrangements are open to any one at Vicksburg who will patronize the Alabama and Vicksburg Railway and the Vicksburg, Shreveport and Pacific Railroad, and no one is prevented

from doing so. Therefore, as to all persons who care to patronize these lines, these arrangements are open to each and every one of them.

If a shipper at Vicksburg voluntarily chooses to patronize some other line, a rival and competitor of this line, it is difficult to see wherein he is injured or discriminated against when it is perfectly open to him to patronize the Vicksburg, Shreveport and Pacific and get the benefit of the rebilling arrangements.

In the West Coast Naval Stores Case this Court held that it is no undue discrimination for a railway company to form an exclusive connection with a certain steamship line and to confine the shipper to the use of this through line, declining at the same time to permit the shipper to use its wharf for the purpose of delivering goods to another and competing steamship line.

This Court held that as long as the through line was kept open to all shippers on equal terms there could be and was no undue discrimination.

198 U. S. 483.

In this connection this Court said:

> "If plaintiff chose to employ, for the further transportation of its goods, the vessels with the managers of which the defendants had some business arrangement or contract, it is not denied that the defendant would and did permit such transportation. In this respect there is no allegation that the plaintiff did not have equal facilities with all other shippers. Defendant's plea avers that it did give to plaintiff the same facilities for shipping its goods over defendant's wharf that it gave to any or all shippers. In brief, the fact seems to be that the only complaint of the plaintiff is that defendant will not permit competing vessels to make use of its wharf for the purpose of such competition."
>
> 198 U. S. 483, 494.

## A Railroad May Prefer Itself and Its Connections Without Being Guilty of Undue Discriminations.

The Supreme Court of Mississippi seems to be under the impression that there is something fraudulent and wrong in a railway promoting its own interests and those of its partners with whom it may have formed through lines with through rates and divisions.

The Supreme Court of Mississippi speaks of the transaction as

> "a cloak assumed to conceal an arrangement which while ostensibly granted as a concession to the Vicksburg dealers, was in truth, devised for the ulterior purpose of fostering the interests of the Vicksburg, Shreveport and Pacific Railroad Company."
>
> Transcript of Record, pages 105-106.

It also uses such expressions as "under the guise of a rebilling rate," a "so-called rebilling rate," etc., apparently taking the view that this very beneficent arrangement which is the commercial life of every port in the United States and the commercial life of every city where milling in transit is done, and is openly and commonly practiced at numerous points in the United States in the interest of the very existence of commerce, has something dark, sinister and dangerous connected with it.

It is hard to believe that the Supreme Court of Mississippi would have used this language if it had read the opinions of the Interstate Commerce Commission in the Compressing in Transit Case, wherein the commercial life of Memphis as a cotton center was involved.

8 I. C. R. 121.

Or if that Court had read the elaborate opinion of the Interstate Commerce Commission in the Export Grain cases.

8 I. C. R. 110;
8 I. C. R. 214.

These cases disclose the wide prevalence of such arrangements as are now attacked at Vicksburg and the absolute necessity of the same for the purpose of keeping open every other Atlantic and Gulf port in this country except New York. The Commission therein states that were it not for such arrangements Boston and New Orleans would be closed as ports of export.

It is not unlawful for a railroad to prefer itself, nor does it amount to undue discrimination.

In the case of Central Stock Yards vs. Louisville & Nashville Railroad Company, 192 U. S. 568, it appeared that one railroad preferred to use its own yards instead of those of another and rival line. This Court said:

> "It could not be said that the defendant was giving an undue or unreasonable preference to itself or subjecting its neighbor to an undue or unreasonable disadvantage if it insisted on delivering live stock which it had carried to the end of the transit at its own yard."
> 192 U. S. 568, 570.

In other words, a railroad company has a right to consider its own interest as this Court has said in the Import Rate Case: "The fair interests of the carrier companies" must be considered.

The fact that the Alabama and Vicksburg Railway declines to make a joint through arrangement or a rebilling arrangement with the Valley Road and at the same time makes one with the V. S. & P. Road constitutes no undue discrimination. This was directly decided in the following cases:

> G. C. & S. F. Ry. vs. Miami S. S. Co., 30 C. C. A. 42, 86 F. R. 407;
> K. & I. Bridge Co. vs. L. & N. R. R., 37 F. R. 567;
> Oregon S. L. vs. Nor. Pac. R. Co., 51 F. R. 465;
> Ill. Waco R. & N. Co. vs. O. S. L., 6 C. C. A. 495, 57 F. R. 673;

A. T. & S. F. Ry. vs. Denver & N. O. R. Co., 110 U. S. 667;
Express Cases, 117 U. S. 1;
L. & N. R. R. Co. vs. West Coast Naval Stores Co., 198 U. S. 483;
Sou. Pac. Co. vs. I. C. C., 200 U. S. 536.

This Court held in the West Coast Naval Stores Case, above cited, that it was no undue discrimination for the Louisville & Nashville Railroad to prevent a shipper from using its wharf at Pensacola, Florida, for shipping his goods over a rival steamship line running in competition with the steamship line with which the Louisville & Nashville Railroad had made through rates and divisions and formed practically a new and independent line of its own.

The West Coast Naval Stores Company desired to use the wharf of the L. & N. at Pensacola for the purpose of shipping its product by tramp steamships. The Louisville & Nashville Railroad objected to the use of its wharf for this purpose and claimed that it had built its wharf to be used in connection with certain steamships with which it had formed a *quasi* partnership for the handling of through traffic.

This Court decided that there was no undue discrimination involved in this refusal and that the Louisville & Nashville had a perfect right to enter into exclusive arrangements with certain connections and could not be forced into partnership with other steamship companies, the rivals and competitors of its connection. Under this ruling there is no undue discrimination involved in the refusal of the Alabama and Vicksburg Railway to enter into rebilling arrangements with the Valley road, a rival and competitor of its connection and partner, the Vicksburg, Shreveport and Pacific Railroad.

Again, in the "Orange Routing Cases," decided at the last term of this Court, it was held that the lines initial in

California and engaged in the citrus fruit trade could select their connections at their eastern termini, and were not obliged to form a connection with every line making a physical connection with their eastern termini, that they had a right to make through arrangements with some connections and not with others, and that it was not undue discrimination to require a shipper to observe certain rules and regulations as to routing, for, inasmuch as the California lines were not obliged to make through arrangements at all, they could impose such reasonable limitations and conditions as were proper, it being open to the shipper to use the through route or not as he saw fit.

So in the case at bar, it is open to the shipper at Vicksburg or any other shipper to use the through route and take advantage of the rebilling arrangement provided by the Alabama and Vicksburg Railway and the Vicksburg, Shreveport and Pacific Railroad, if he desires to do so upon the conditions imposed, which are eminently reasonable and open to any one caring to patronize the route.

It would certainly be most unreasonable to force the Alabama and Vicksburg Railway into partnership with a rival and competing line against its will, and this is the effect of the order of the Mississippi Railroad Commission.

Considering all the circumstances in the light of the cases, we therefore feel that we can confidently answer the question put by the Justice in the negative, and say that there is no undue discrimination against any one, nor would it be justice to force the Alabama and Vicksburg Railway to enter into a partnership with its rivals and competitors in business, which is the effect of the order of the Mississippi Railroad Commission.

## Congress Alone Can Correct Undue Discriminations With Respect to Interstate Commerce.

We here repeat what we said at page 82 of our original brief.

But conceding, for the purposes of argument only, that undue discrimination is created by confining the interstate rebilling arrangement in question exclusively to the Vicksburg, Shreveport and Pacific Railway, it is not within the province of the Mississippi Railroad Commission to attempt a correction of such discrimination as to interstate traffic.

> "But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, *its own methods to prevent discrimination in rates*, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States can not be overestimated." (Italics ours.)
>
> 118 U. S., 557-577.

Power to correct undue discriminations as to interstate traffic has been vested by Congress solely in the machinery created by the Act to regulate commerce, and the Mississippi Railroad Commission has no jurisdiction in the premises.

> G. C. & S. F. Co. vs. Hefley & Lewis, 158 U. S., 98;
> L. & N. R. Co. vs. Eubank, 184 U. S., 27.

## The Principle Herein Involved is World-Wide. Supposed Discrimination Universally Complained of.

The principle involved in this case is of such importance and of such worldwide prevalence that we may be pardoned for calling attention to the fact that all over the world the same thing has been complained of.

The necessities of trade put it beyond the power of the railways or other transportation lines to do more or less than succumb to the imperative forces which control the situation.

Experience demonstrates that low grade traffic, such as grain, will not move long distances except at low rates. Railroad companies and other transportation companies in recognizing this fact, pursuant to the insuperable force of circumstances, have been frequently complained of, simply because the public believes that they voluntarily and viciously make low rates for the purpose of unjust discrimination and for no other reason.

The very same thing which is now the subject of discussion in this Vicksburg Case is thus spoken of by Mr. Hadley, now President of Yale College, in his work on Railroad Transportation, at page 181:

> "Thus, the rate from Glasgow to London on the beef of American cattle slaughtered at the wharf is 45s per ton, while for Scotch meat the rate for the same service is 77s. Foreign hops are charged 17s. 6d. per ton from Boulogne to London; English hops are charged 35s per ton from intermediate points. Norway lumber is conveyed at about half the rates charged for English lumber of the same quality. There are hundreds of such examples which might be given. Of course, English producers feel very indignant at such discriminations; and they feel worse because it all seems to be for the benefit of foreigners."
>
> Hadley's Railroad Transportation 181.

Professor Hadley also gives an interesting account of the attempt of Prince Bismark to prevent low divisions of through rates being accorded to traffic coming from Austria into Prussia, on the theory that these low divisions operated as a discrimination against Prussian manufactures. He shows that the only result was to drive the traffic from the Prussian railways and thus deprive them of the revenue derived therefrom. He further shows that the traffic still continued over the waterways of Prussia in connection with Austrian railways, and finally concludes with the observation

> "It is clear that even with the whole power of the European Governments, the laws of trade have proved too strong for any arbitrary attempt at railroad regulation to succeed."
> *Id.* 248.

The fact that the Iron Chancellor, with all his authority and great intellect, coupled with the fact that the Prussian Government owned the railways, was powerless to override the laws of trade is of considerable interest.

There is one thing certain, and that is, that low grade freight, such as grain, will not move long distances except upon low rates. It is further certain that it is not undue discrimination for a railway company to recognize this fact, for it can not help itself.

## New Bills of Lading Customarily Issued at Many Stages of Through Shipment.

The Supreme Court of Mississippi misconceives the true nature of a rebilling rate and whatever may have been the former opinion of the Interstate Commerce Commission on this question its present views, since the decision of this Court in the Import Rate Case are radically different.

The Commission now recognizes that an enormous volume of the commerce of this country is conducted on the plan of taking out new bills of lading as the property proceeds on its journey, either in its original form, like grain, for example, or in some changed form, such as flour, and that the mere fact that it proceeds from one point to another on one bill of lading, and is there unloaded or put in an elevator remaining for a brief period before it again proceeds on its journey on a new bill of lading, does not at all change the through character of the shipment. In fact, nearly all the grain exported from the United States through every port in the United States follows this course.

> "Looking now to the articles involved in this investigation, we find that flour is almost invariably exported upon a through bill and at a through rate. This falls, therefore, exactly within the terms of the decision of the Supreme Court of the United States. We think that the export rate upon grain is equally within the spirit of that decision. *For certain reasons, mainly the preference of the foreign buyer for a ship's bill of lading, grain is not usually exported upon through bills; but the whole transaction is none the less in fact a through shipment.* The grain starts for and proceeds to the foreign destination. Every consideration which renders it proper to accept less as a division of the through rate on export flour renders it equally proper to accept a lower rate upon the grain itself to the port of export." (Italics ours.)
>
> 8 I. C. R., 214, 255.

Again in the Cotton Compress Case the Commission says:

"It is still further urged that the ownership of the cotton changes at the compress. The testimony does not show this. But, assuming that it did, how would that alter the character of the transaction? The ownership of merchandise frequently changes en route. Bills of lading are usually transferable, and the sale of the bill of lading operates as a transfer of the title to the property. *Frequently the carrier takes up the old bill of lading and issues in its place one or more new bills of lading during the period of transit, but this in no way alters the character of the carriage, nor is it apparently in violation of the Commerce Act.*" (Italics ours.)

8 I. C. R. 121, 137.

In the case of Rosenbaum Grain Company vs. C. R. I. & T. Ry., 130 F. P. 46, the United States Circuit Court for the Northern District of Texas restrained the Texas Railroad Commission from enforcing an order to "cancel out" certain "proportional rates" whereby the Rosenbaum Grain Company handled grain at Fort Worth, Texas, through its elevators. It appears in the bill, but not clearly in the opinion of the Court that the "proportional tariffs in force permitted the grain to be stopped over in the elevators for a period of several months, whereafter it could be exported. The effect of the order of the Texas Railroad Commission was to require the grain to be sent on in exactly the same car in which it reached Fort Worth. This order would have destroyed the business of the Rosenbaum Company, and would have destroyed Fort Worth as a grain center, and is very similar to the order promulgated by the Mississippi Railroad Commission in the case now at bar, and would be precisely in accord with the opinion of the Supreme Court of Mississippi as to what constitutes a rebilling rate. The Federal Court enjoined the order of the Texas Railroad Commission in the Rosenbaum case because the same interfered with interstate commerce.

This decision in effect necessarily held that the movement was a through movement of grain, notwithstanding the fact that it is unloaded from the cars and put into the elevators at Fort Worth and kept there several months. It not only held that it was a through movement, but also that it was an export movement, and we have seen that nearly all grain exported proceeds from the port on a new bill of lading or a ship's bill of lading.

The opinion of the Court in the Rosenbaum case does not disclose whether or not the grain reached Fort Worth on one bill of lading, was taken out and put into the elevators and then after the expiration of a certain time was forwarded from Fort Worth to the port on a new bill of lading. But this was doubtless the case, for this is the practice in vogue all over the country as to grain. At any rate, the decision could not have been given unless the movement was considered a through movement, notwithstanding the fact that the grain was taken out at Fort Worth and put in the elevators.

This opinion was affirmed by the Circuit Court of Appeals for the 5th Circuit.

See 130, F. R., 110.

It is quite erroneous to suppose that in order to constitute a through movement there must be a bill of lading from point of origin to point of destination, or that the goods must be carried on in the same cars in which they started.

The slightest reflection will prove the truth of this. A person may start from Washington to Yokohama and may buy a ticket from Washington to St. Louis, remain over in St. Louis a few days for rest, and then buy another ticket from St. Louis to San Francisco, where he may remain over several days and then proceed on his journey under another ticket covering that part of the transportation which is to

be done by sea. The movement would be a through movement from Washington to Yokohama.

Large quantities of tea are sent from China to Russia as a through movement. The camels, sleighs and other vehicles involved in the transportation are changed and the goods are unloaded and reloaded en route and may remain at various stages of their journey at rest for a considerable period of time, yet the movement is a through movement and has been so considered for ages.

In Kelly vs. Rhoads, 188 U. S. 1, this Court held that driving a flock of sheep across a State, the flock being rested over night and grazed on the way, constituted a through and continuous movement, without the intervention of any bill of lading whatever.

Whether or not the movement is a through movement or a local movement depends upon the facts surrounding the movement and the existence or the non-existence of a bill of lading is only one of the facts to be considered, and not the decisive element or the controlling factor.

As was well pointed out in the case of Coe vs. Errol, 116 U. S. 517, goods may start for export from a State to some foreign country and

> "though intended for exportation, they may never be exported; the owner has a perfect right to change his mind. * * *"
>
> 116 U. S., 517, 526.

So it is quite possible for an export bill of lading to be taken out and the goods actually started on their journey, and then the owner may change his mind and stop the goods in transit within the borders of the State and convert what on the face of the bill of lading is a foreign movement, into a local movement, the goods being stopped at some point where they might be consumed. It is not uncommon for cotton raised within the borders of a State

to be sent to a port for export and yet the owner may change his mind and sell the very cotton originally intended for export to some mill within the State which will consume it and the cotton never be exported.

The bill of lading is not, therefore, the controlling criterion of a through movement, but as this Court has decided, whether or not the movement is through or local depends upon the facts of the actual transaction. Hence the new and recent rulings of the Interstate Commerce Commission are in accord with the decisions of this Court and right reason.

Respectfully submitted,

HARRY H. HALL,
*Counsel for Alabama & Vicksburg Railway Company.*

McWILLIE & THOMPSON
*Associate Counsel.*

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FILED
DEC 6 1905
JAMES H. McKENNEY

# Supreme Court of the United States.

OCTOBER TERM, 1905.

ALABAMA AND VICKSBURG RAILWAY COMPANY,
PLAINTIFF IN ERROR,

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI,
DEFENDANT IN ERROR.

No. 97

**Motion to dismiss writ of error or to affirm the judgment of the court below, together with brief of defendant in error on said motion.**

MONROE McCLURG,
HANNIS TAYLOR,
*Counsel for Defendant in Error.*

PRESS OF GIBSON BROTHERS.
WASHINGTON, D. C.
1905.

# Supreme Court of the United States.

OCTOBER TERM, 1905.

ALABAMA & VICKSBURG RAILWAY COMPANY, *Plaintiff in Error*,

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI, *Defendant in Error.*

No. 371.

Motion to dismiss writ of error or to affirm the judgment of the court below.

Now comes the above-named defendant in error, by its counsel, and moves the Court on the record herein:

1. To dismiss the writ of error herein for want of jurisdiction in this court.

2. To affirm the judgment of the Supreme Court of the State of Mississippi, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision and judgment of the said court are obviously correct, and upon the further ground that even if the record shows jurisdiction in this court it is manifest that the writ of error herein was taken for

delay only and the question upon which jurisdiction depends is so frivolous as to need no further argument.

Respectfully submitted,

MONROE McCLURG,
HANNIS TAYLOR,
*Counsel for Defendant in Error.*

# Supreme Court of the United States.

OCTOBER TERM, 1905.

ALABAMA & VICKSBURG RAILWAY COMPANY, *Plaintiff in Error*,

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI, *Defendant in Error.*

*No.* 371.

SIR:

Please take notice that the defendant in error in the above action will, on the 11th day of December, 1905, at twelve o'clock, noon, on said day at the opening of said court, or as soon thereafter as counsel can be heard, at the Supreme Court Room, in the City of Washington, District of Columbia, in open court move this court on the record herein:

1. To dismiss the writ of error herein for want of jurisdiction in this court.

2. To affirm the judgment of the Supreme Court of the State of Mississippi, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision and judgment of the said Supreme

Court of Mississippi are obviously correct, and upon the further ground that even if the record shows jurisdiction in this court, it is manifest that the writ of error herein was taken for delay only and the question, upon which jurisdiction depends, is so frivolous as not to need further argument.

Together with this motion the defendant in error serves upon the plaintiff in error a copy of his brief of argument.

Dated Washington, November 14, 1905.

MONROE McCLURG,
*Counsel for Defendant in Error,*
Greenwood, Mississippi.

HANNIS TAYLOR,
*Counsel for Defendant in Error,*
2018 O Street N.W.,
Washington, D. C.

To HARRY H. HALL, Esq.,
*General Counsel Queen and Crescent Route,*
New Orleans, La.

# Supreme Court of the United States.

OCTOBER TERM, 1905.

ALABAMA & VICKSBURG RAILWAY COMPANY,
*Plaintiff in Error,*

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.
*Defendant in Error.*

No. 371

*In Error to the Supreme Court of the State of Mississippi.*

## BRIEF OF ARGUMENT IN SUPPORT OF MOTION TO DISMISS FOR WANT OF JURISDICTION.

### I.

### STATEMENT OF THE CASE.

The plaintiff in error, the Alabama & Vicksburg Railway Co., a corporation created by the State of Mississippi, avers that it is "engaged in the operation of a railroad for the transportation of passengers and freight between the cities of Vicksburg and Meridian

in said State, a distance of one hundred and forty miles, which constitutes the whole of its line." The defendant, the Railroad Commission of Mississippi, is a governmental agency of that State which derives its powers from its Annotated Code of 1892, defining the functions of said Commission in a series of sections extending from Sec. 4273 to Sec. 4336, both inclusive. Sec. 4297 provides that "The commission shall docket, hear, and determine all complaints made of any time schedule, or of the tariff of rates, joint or several, made by any railroad, or fixed or approved by the commission, on the ground that the same, in any respect, is, in the case of time schedule, unnecessarily inconvenient for the public or, in the case of a tariff of rates, that the charges are for more than just compensation, *or that such charges, or any of them, amount to, or operate so as to effect unjust discrimination*," etc. On December 13, 1902, the board of trade of Meridian presented to the Railroad Commission in question a petition praying that a proportionate rate of three and one-half cents per cwt. then in effect from Vicksburg to Meridian, over the line of appellant be made an open rate subject to the use of all shippers from Vicksburg. The rate referred to in the petition was a rate on grain and grain products handled in carload lots. This class of freight, under the guise of a "re-billing rate," was transported from Vicksburg to Meridian at the rate of three and one-half cents per cwt. The rate in question had been established by the voluntary action of the appellant, but with it was coupled a condition which made its practical working a very great advantage to those receiving freight over the Vicksburg, Shreveport and Pacific Railroad, and an unjust discrimination against all but that specially favored class. The condition

which worked this discrimination consisted of a limitation of the "re-billing" rate to those receiving freight over the Vicksburg, Shreveport & Pacific Railroad, there being only one other connecting line of railroad at Vicksburg. A true re-billing rate is one in which goods received in unbroken carload lots over one line of railway can be re-billed over the same or another line completing one continuous trip of the same commodity, simply changing the consignee and altering the destination of the identical shipment without unloading or handling of freight. What is demonstrated a re-billing rate in this record, does not, as actually employed, comply with the definition above given, in several most important particulars. In the first place, the rate is not applied to consignments arriving over all connecting lines, but is only available to those receiving freight over a single railroad, the Vicksburg, Shreveport & Pacific Railroad. In the second place, the freight re-consigned over the Alabama & Vicksburg Railway line did not complete one continuous trip, without handling or unloading, and was not necessarily, or even generally, the identical shipment which was originally consigned to the merchant in Vicksburg—it being the custom for the dealer in Vicksburg handling freight over the Vicksburg, Shreveport & Pacific Railroad Co. to save his "expense bills" (or receipts showing the amount of freight which he had received over that line) so that he might be granted the privilege within ninety days from the date of such receipts, of shipping freight of an equal quantity over the line of appellant at the re-billing rate of three and one-half cents per cwt. Thus a merchant receiving a carload of oats over the Vicksburg, Shreveport & Pacific Railroad could, within ninety days of that date, ship over appel-

lant's line a carload of corn or other grain product without regard to the source from which it was procured. The result of that arrangement was that the merchant in Vicksburg who patronized the Vicksburg, Shreveport & Pacific Railroad Co. could receive any amount of grain product by barge or otherwise, and keep it stored in warehouse with the full assurance that he could at any time within the period stated have the advantage of this cheap rate, over appellant's line, whereas the merchant not dealing with this specially favored "associated line" was denied the same rate. In order to remedy that gross discrimination an appeal was made to the Railroad Commission of Mississippi, which made an order converting the so-called re-billing rate into an open or flat rate, with the result that all dealers handling grain or grain products in carload lots could enjoy the rate then in force from Vicksburg to Meridian. The existing rates were left undisturbed, *the only change wrought by the order being the abolition of the condition precedent insisted on by the appellant restricting the rate to the exclusive benefit of such as had received previous and equal shipments over its associated line.* In passing upon the validity of that order the Supreme Court of Mississippi said: "'That is the exact status of the order presented to us for review. A tariff or rates had been established by the voluntary action of the railroad company; that tariff operated to work unjust discrimination; complaint was made; the proof fully supports the justice and truth of the grounds on which the complaint is based; *that proof satisfied the chancellor, and it satisfies us, that the so-called re-billing arrangement was simply a cloak assumed to conceal an arrangement which, while ostensibly granted as a concession to the Vicksburg dealers, was in truth, devised for the*

*ulterior purpose of fostering the interests of the Vicksburg, Shreveport & Pacific Railroad Company*, perhaps, as it is argued, to maintain present rates to Meridian for the benefit of an associated and connecting railroad at that point. In such state of case the power of the Commission to make any change which justice may demand is unquestionably so well established that we deem any citation of authorities further than a reference to the briefs of counsel, a work of supererogation."

## II.

### Power of a State to Regulate Traffic Within its Limits, not Strictly Interstate.

Nothing is better settled than the power of a State to regulate traffic carried on within its limits, not strictly interstate. Postal Telegraph Cable Co. *v.* Charleston, 153 U. S. 692. A railroad corporation largely engaged in interstate commerce is amenable to state regulation and taxation as to any of its service which is wholly performed within the state, and not as a part of interstate service. New York *ex rel.* Penna. R.R. Co. *v.* Knight, 192 U. S. 21; Pullman Co. *v.* Adams, 189 U. S. 420; Kehrer *v.* Stewart, 197 U. S. 67. The Supreme Court of Mississippi held that the re-billing rate, so-called, involved in this case was in fact a local rate; that the Railroad Commission had the power to make the order that the re-billing rate be made a local rate, in order to prevent discrimination; that the subterfuge employed "was simply a cloak assumed to conceal" the discrimination. In New York *ex rel.* Penna. R.R. Co. *v.* Knight, this court said: "But when service is wholly within a state, it is presumably subject to state control. *The burden is on him who asserts that, though actually*

*within, it is legally outside the state; and unless the interstate character is established, locality determines the question of jurisdiction.*" In Osborne *v.* Florida, 164 U. S. 654, this court said: "The particular construction to be given to this state statute is a question for the state court to deal with, and in such case as this we follow the construction given by the state court to the statute of its own. Leffingwell *v.* Warren, 2 Black, 599; New York *v.* Weaver, 100 U. S. 539; Noble *v.* Mitchell, 164 U. S. 367, and cases there cited. The Supreme Court of Florida has construed the 9th section of this act and has held in express terms that it does not apply to or affect in any manner the business of this company, which is interstate in its character; that it applies to and affects only its business which is done within the state, or is, as is termed 'local' in its character, and it has held that, under that statute, so long as the express company confines its operations to express business that consists of interstate or foreign commerce, it is wholly exempt from the legislation in question." There is no possible ground upon which it can be held that the order of the Railroad Commission in question put any additional burden or impediment upon interstate commerce, even if the traffic in question could be proven to be such. It was not such; it was simply intra-state traffic carried on by a state corporation within its limits, and as such intra-state traffic was subject to state control. Such was the decision of the highest court of the state when construing the state statute, and this court will, under the rule laid down in Orborne *v.* Florida, "follow the construction given by the state court to the statute of its own." The writ of error should, therefore, be dismissed, because the question decided by the state court is one over which this court has no jurisdiction.

## III.

### A Vain Attempt to Inject Federal Questions into this Record.

The appellant attempted to inject federal questions into this record by urging the following contentions: *First*, that inasmuch as its intra-state business only yields a certain stated percentage, less than one-half, of its gross revenues, that it does not in fact pay the expenses of maintaining and operating its road within the borders of the state, and therefore a reduction of existing rates is an indirect placing of a burden on inter-state business. To that contention appellee replied that it was not shown with any degree of certainty the proportionate amount of the gross expenses of the rail-road company incurred on account of the intra-state business, but that that amount was only arrived at by estimation, and, therefore, the appellate court of the state could not say as a matter of fact in the absence of positive proof, that the intra-state business of the appellant did result in a net loss, and as the findings of the Railroad Commission were to be dealt with as being *prima facie* correct, in the absence of direct proof of error, that the appellate court of the state should affirm its findings of fact. *Second*, appellant further contended that the hauling of grain and grain products at a flat or open rate of three and one-half cents per hundred pounds would produce less than the actual cost of transporting the freight, so that the more business of this character the appellant handles the greater its loss. It is therefore claimed that this is in effect the taking of the property of appellant without due process of law. To that contention appellee replied that the

figures shown in the record do not prove that freight handled in the usual and customary course of business as freight trains are ordinarily constructed, at the established rate, would result in a loss. But no matter how that may be as a matter of fact, the defense is worthless as a matter of law. Such was the result of the decision of this court in Pullman Co. *v.* Adams, 186 U. S. 420, where it was said: "The company attempted by pleas and by an offer of evidence to bring before the court the fact that its receipts from this class of passengers did not equal the expenses chargeable against such receipts. It contended that these facts would show that the business within the state was merely a burden on its commerce between the states, while at the same time, it argued, it was compelled to assume that burden by Sec. 195, of the Constitution, which declares sleeping car companies to be common carriers and subject to liability as such. The pleas were held bad on demurrer, the evidence was rejected, and the jury was instructed to find for the plaintiff on the facts admitted. These rulings and the refusal of the court to declare the above-mentioned Sec. 3387 unconstitutional are the errors assigned." This court held that there was no error, and the judgment of the Supreme Court of Mississippi, upholding the right of that state to control the local business of the Pullman Co. within its limits, was affirmed. The foregoing statement of the contentions presented by appellant, in its effort to inject federal questions into this record, has been made for a single purpose, and that is to show to this court that such contentions were not necessarily involved in the decision of the state court, which, for that reason, ignored them. After stating such contentions the Supreme Court of Mississippi said: "*We decline to enter*

*upon a discussion of either question, neither is necessarily involved in the decision of this case.* It might be conceded that the intra-state business of the railroad results in a net loss, and might further be conceded that the transporting and handling of grain and grain products at the rate established, may not in actual operation bring a fair remuneration when limited to that one commodity, *nevertheless the rate having been established by the voluntary action of the appellant it must not be so enforced as to operate as an unjust discrimination against any one.* If the appellant chooses to establish as to a certain favored class of shippers a rate so low as to be unremunerative, justice demands, and the law will require, that the rate be granted to all alike. 'Special privileges to none' is the rule of action by which common carriers must measure their conduct." Record, pp. 106–107. It thus appears that the judgment of the Supreme Court of Mississippi simply upheld the Railroad Commission of that state in striking down, *within the limits of the state*, an unlawful discrimination in the application of a rate voluntarily established by appellant, a corporation whose termini are within the state. Certainly the decision of the state court, on that independent ground not involving a federal question, is broad enough to maintain the judgment, and for that reason it cannot be reviewed here. In California Powder Works *v.* Davis, 151 U. S. 389, 393, this court said that: "it is axiomatic that, in order to give this court jurisdiction on writ of error to the highest court of a state in which a decision could be had, it must appear affirmatively, not only that a federal question was presented for decision by the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the

cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. And where the decision complained of rests on independent ground not involving a federal question, and broad enough to maintain the judgment, the writ of error will be dismissed by this court without considering any federal question that may also have been presented." See also, Isreal *v.* Arthur, 152 U. S. 362; Winter *v.* Montgomery, 156 U. S. 386; Missouri Pacific Ry. *v.* Fitzgerald, 160 U. S. 576; Seeberger *v.* McCormick, 175 U. S. 280. As this court has no jurisdiction to review the judgment in question, the writ of error should be dismissed.

The final judgment of the Supreme Court of Mississippi was rendered May 8, 1905. On July 7, 1905, the Chief Justice of that court filed what is called "Certificate of Chief Justice" in which he sets forth his personal views as to what was involved in the argument had before the court. Certainly such a paper is not a part of the record under the authority of Armstrong *v.* Athens County, 16 Pet. 281, wherein it was held that "in order to give this court jurisdiction under the 25th section of Judiciary Act of 1789, it must appear on the record itself to be one of the cases enumerated in that section; *and nothing out of the record certified to this court can be taken into consideration.*" All of which is respectfully submitted.

MONROE McCLURG,
HANNIS TAYLOR,
*Counsel for Defendant in Error.*

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Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

# Supreme Court of the United States

OCTOBER TERM, 1905.

No. [redacted]97

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ALABAMA AND VICKSBURG RAILWAY COMPANY AND ROBERT H. THOMPSON AND THOMAS A. McWILLIE, ITS SURETIES, PLAINTIFFS IN ERROR.

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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***MOTION TO ADVANCE.***

# Supreme Court of the United States.

OCTOBER TERM, 1905.

ALABAMA & VICKSBURG RAILWAY COMPANY ET ALS., *Plaintiffs in Error*

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

*No.* 371.

## IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

### MOTION TO ADVANCE.

The defendant in error moves the Court to advance this cause for hearing and assigns the following reason for the motion.

The defendant in error, the Railroad Commission of Mississippi, is a governmental agency of that State which derives its power from its Annotated Code of 1892, defining the functions of said Commission in a series of sections extending from Sec. 4273 to Sec. 4336, both inclusive. Sec. 4297 provides that "the Commission shall docket, hear, and determine all complaints made of any time schedule, or of the tariff of rates, joint or several, made by any rail-

road, or fixed or approved by the Commission, on the ground that the same, in any respect, is, in the case of time schedule, unnecessarily inconvenient for the public or, in the case of a tariff of rates, that the charges are for more than just compensation, or that such charges, or any of them, amount to, or operate so as to effect unjust discrimination," etc. Application having been made to said Commission by the Board of Trade of Meridian, on December 13, 1902, in a petition praying that a certain proportionate rate of three and one-half cents per cwt., particularly described in the Record, then in effect from Vicksburg to Meridian over the line of appellant, be made an open rate subject to the use of all shippers from Vicksburg, and petition was granted and an order made converting the so-called rebilling rate into an open or flat rate, to the end that all dealers handling grain or grain products in car-load lots could enjoy the rate then in force from Vicksburg to Meridian. The validity of said order thus made by defendant-in-error has been confirmed by the Supreme Court of the State of Mississippi. The writ of error now pending herein, in superseding the said judgment of said Supreme Court of Mississippi, is suspending the execution of the said order made by the defendant-in-error as aforesaid, to the great detriment and inconvenience of the government of the State of Mississippi and the people thereof.

Wherefore, the defendant-in-error moves the Court that this cause may be advanced and that as early an argument of the same may be had as is convenient to this Court.

MONROE McCLURG,
HANNIS TAYLOR,
*Counsel for Defendant in Error.*

This April 2d, 1906.

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# Supreme Court of the United States,

## OCTOBER TERM, 1906.

*No 97.*

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
Clerk.

ALABAMA AND VICKSBURG RAILWAY COMPANY,

*Plaintiffs in Error.*

vs

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI.

*Defendant in Error.*

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In Error to the Supreme Court of the State of Mississippi.

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MONROE McCLURG,
C. H. ALEXANDER,
HANNIS TAYLOR,

*Counsel for Defendant in Error.*

# Supreme Court of the United States.

OCTOBER TERM, 1906.

ALABAMA & VICKSBURG RAILWAY COMPANY, *Plaintiff in Error*,

*v.*

THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI, *Defendant in Error.*

*No.* 97.

**In error to the Supreme Court of the State of Mississippi.**

## BRIEF FOR THE DEFENDANT IN ERROR.

I.

**Power of a State to control commerce wholly within its limits.**

We know that this court will not, in any event, attempt to reverse the judgment rendered by the Supreme Court of Mississippi in this case until it has (1) carefully considered the precise data of fact upon which such judgment was based, and (2) the conclusions of law drawn from such data. The opinion of the lower court begins with the statement that "the facts which are decisive of this controversy are very few and a statement of them eliminates

from consideration many of the more difficult questions urged by counsel." After declining to pass upon the Federal questions presented by counsel because neither is necessarily involved in the decision of this case, the lower court concludes as follows: "It might be conceded that the intrastate business of the railroad results in a net loss, and might further be conceded that the transporting and handling of grain and grain products at the rate established, may not in actual operation bring a fair remuneration when limited to that one commodity. *Nevertheless, the rate having been established by the voluntary action of the appellant, it must not be so enforced as to operate an unjust discrimination against any one. If the appellant chooses to establish as to a certain favored class of shippers, a rate so low as to be unremunerative, justice demands, and the law will require, that the rate be granted to all alike. 'Special privileges to none' is the rule of action by which common carriers must measure their conduct.*" Such is the essence of the judgment which determines that the commerce in question is "intrastate business" and as such wholly within the control of the State of Mississippi. It has been determined here that there is a commerce wholly within the State, which is not subject to the constitutional provision. Louisville, N. O. and T. R. Co. *v.* Mississippi, 133 U. S. 387; Lehigh Valley R. Co. *v.* Pennsylvania, 145 U. S. 192. The lower court reached the conclusion that the subject-matter in question was entirely within state control for the following reasons:

1. First, because plaintiff in error is a corporation created

by the State of Mississippi which, as it avers, is "engaged in the operation of a railroad for the transportation of passengers and freight between the cities of Vicksburg and Meridian in said State, a distance of one hundred and forty miles, *which constitutes the whole of its line.*"

2. Because the only complaint made by plaintiff is of an order made by the Railroad Commission of Mississippi, a governmental agency of that state which derives its powers from its Annotated Code of 1892, defining the functions of said commission. The lower court has adjudicated that the Railroad Commission in question acted strictly within its powers in this matter. Certainly that is purely a question of state law so far as the powers of the Commission under the state statutes are concerned.

3. Because the so-called "re-billing rate" devised by plaintiff with the view of making it appear that the business in question was interstate business was a dishonest device intended to conceal the real truth. The lower court says in its opinion: "That is the exact legal status of the order presented to us for review. A tariff or rate had been established by the voluntary action of the railroad company; that tariff operated to work unjust discrimination; complaint was made; the proof fully supports the justice and the truth of the grounds on which the complaint is based; that proof satisfied the Chancellor, and it satisfies us, that the so-called re-billing arrangement was simply a cloak assumed to conceal an arrangement which, while ostensibly granted as a concession to the Vicksburg dealers, was in truth, devised for the ulterior purpose of

fostering the interests of the Vicksburg, Shreveport and Pacific Railroad Co." The lower court had previously said "In the second place the freight reconsigned over the Alabama and Vicksburg Railway line did not complete one continuous trip, without handling or unloading, and was not necessarily, or even generally, the identical shipment which was originally consigned to the merchant in Vicksburg. The custom being that dealers in Vicksburg handling freight over the Vicksburg, Shreveport and Pacific Railroad Company could save their 'expense bills' (or receipts showing the amount of freight which they had received over that line) and be granted the privilege within ninety days from date of such receipts, of shipping freight of an equal quantity over the line of the appellant at the re-billing rate of three and one-half cents per cwt. *Thus, a merchant receiving a carload of oats over the Vicksburg, Shreveport and Pacific Railroad could within ninety days of that date ship over appellant's line a* **car load of corn** *or other grain produced without regard to the source from which it was procured.*" It thus appears that the arrangement in question would apply perfectly *to a carload of corn raised upon Mississippi soil near Vicksburg and destined for consumption in Meridian.* Therefore the Supreme Court of Mississippi naturally held that the re-billing rate, so-called, involved in this case was in fact a local rate; that the Railroad Commission had the power to make the order that the re-billing rate be made a local rate, in order to prevent discrimination; that the subterfuge employed "was simply a cloak assumed to conceal"

the discrimination. In New York *ex rel.* Penna. R. R. Co. *v.* Knight, 192 U. S. 21, this court said: "But when service is wholly within a State, it is presumably subject to state control. *The burden is on him who asserts that, though actually within, it is legally outside the State; and unless the interstate character is established, locality determines the question of jurisdiction.*" In Osborne *v.* Florida, 164 U. S. 654, this court said: "The particular construction to be given to this state statute is a question for the state court to deal with, and in such case as this we follow the construction given by the state court to the statute of its own. Leffingwell *v.* Warren, 2 Black, 599; New York *v.* Weaver, 100 U. S. 539; Noble *v.* Mitchell, 164 U. S. 367, and cases there cited. The Supreme Court of Florida has construed the 9th section of this Act and has held in express terms that it does not apply to or affect in any manner the business of this company, which is interstate in its character; that it applies to and affects only its business which is done within the State, or is, as is termed 'local' in its character; and it has held that, under that statute, so long as the express company confines its operations to express business that consists of interstate or foreign commerce, it is wholly exempt from the legislation in question."

Nothing is better settled than the power of a State to regulate traffic carried on within its limits, not strictly interstate. Postal Telegraph Cable Co. *v.* Charleston, 153 U. S. 692. A railroad corporation largely engaged in interstate commerce is amenable to state regulation

and taxation as to any of its service which is wholly performed within the State, and not as a part of interstate service. New York *ex rel.* Penna. R. R. Co. *v.* Knight, 192 U. S. 21; Pullman Co. *v.* Adams, 189 U. S. 420; Kehrer *v.* Stewart, 197 U. S. 67.

The Supreme Court of Mississippi therefore decreed that the business in question was really intrastate business, and that the order in question made by the Railroad Commission of that state related to a matter within its exclusive jurisdiction. It thus appears that the decree of the lower court was confined to a single subject-matter wholly within the control of the State of Mississippi and not subject to any of the clauses of the Federal constitution which the plaintiff in error has invoked.

II.

**On a writ of error nothing is removed for re-examination but questions of law arising upon the record.**

It is not necessary to cite authorities to maintain the proposition that upon a writ of error this court has no right to review the decision below, upon the ground that the finding was against the evidence or the weight of the evidence. Upon a writ of error, this court can not review a decision of a question of fact, even where, by the local practice of the State, the law and the facts are tried together by the judge without a jury. Dower *v.* Richards, 151 U. S. 658. In Eagan *v.* Hart, 165 U. S., 188, this court, after declaring that on error to a state court, this court can not re-examine the evidence, and when the facts are found below is concluded by such finding, said

"that on error to the Supreme Court of Louisiana the opinion of that court is to be treated as part of the record, and that it may be examined in order to ascertain the questions presented, and this court may for the purpose, not of deciding the facts, but by way of throwing light on the findings, look into the entire record." Suppose the benefits of that liberal rule were extended to the plaintiff in this case, what would be the result? The record shows that no "*findings of fact*" were ever made either by the Chancellor, who dismissed the bill for want of equity, or by the Supreme Court of Mississippi which simply affirmed the decree dismissing the bill. It is a well settled rule of pleading that when such a dismissal takes place, an "opinion or finding is not required." See Enc. of Pleading and Practice, vol. 6, pp. 996. It is not necessary or usual in the Chancery practice of Mississippi for a Chancellor to file any opinion at all under such circumstances, and for that reason the Chancellor in this case simply addressed a letter or communication to counsel which has in some way crept into the record, but is no proper part of it. See Tr. p. 94. While this court has nothing whatever to do either with the decree or the opinion of the Chancellor the erroneous and misleading statement in plaintiff's brief that the "Chancellor finds as a fact that three and one-half cents rate on grain imposed by the Mississippi Railroad Commission requires railway company to haul at a loss and Supreme Court of Mississippi affirms this finding," (p. 38), should be corrected. The record shows affirmatively that *the Chancellor made no findings of fact whatever.* He simply dismissed the bill for want of equity which action precluded

the possibility of a finding. In the course of the so-called opinion which was superfluous, the Chancellor referred to a certain statement made by a Mr. Harvey, but he did not undertake to say that such statement proved the fact in question. On the contrary the Chancellor says, "But when Mr. Harvey on whom the burden of proof is cast (that is to show a loss to the Company), is called upon to show that he says: 'Neither in our records, nor bookkeeping, nor in any other manner, has our company any accurate way of apportioning the cost of expense between the State and inter-state' * *. The burden of proof when their action is sought to be impeached, is cast upon the party assailing it, and cannot be overthrown by the statement that the local business is being run at an expense unless the showing is made." Tr. p. 97. So far from the Supreme Court of Mississippi supporting the contention "that three and one-half cents rate on grain, imposed by the Mississippi Railroad Commission, requires railway Company to haul at a loss," *it said expressly that it would not consider that subject at all*, because it was immaterial. Its exact language is this: "We decline to enter upon a discussion of either question; neither is necessarily involved in the decision of this case." Tr. p. 106. The practical result is that, even if the opinion of the State Supreme Court should be treated as a finding of fact, it contains absolutely no data of fact upon which plaintiff in error can base its arguments, which are entirely abstract. All of its assumptions of fact, as the bases of its defenses, are without support in the record.

## III.

**Even if the commerce in question was interstate the order of the Railroad Commission prohibiting a discrimmination within the State was not illegal.**

As the lower court has adjudged that the commerce in question was intrastate the burden is on the plaintiff to maintain the contention that it was interstate. "But when service is wholly within a State it is presumably subject to state control. The burden is on him who asserts that, though actually within, it is legally outside the State; and unless the interstate character is established, locality determines the question of jurisdiction." New York *ex. rel.* Penna. R. R. Co. *v.* Knight, 192 U. S. 21. The pretense set up by plaintiff in error that "As a matter of fact, the re-billing rate was not voluntarily adopted," is entirely without foundation as clearly appears from its brief, pp. 7–11. As to that pretense the Supreme Court of Mississippi has well said: "Again we do not recognize it as a possibility under any contingency that the Railroad Commission of Mississippi would, or need employ threat or menace to protect the rights of the public from the aggression or extortion of corporations. We rebuke the intimation as an unwarrantable aspersion of the Railroad Commission. A state tribunal charged with the duty of exercising 'a watchful and careful supervision over the tariffs of charges of every railroad,' and of revising 'the same from time to time as justice to the public and to the railroad may require,' is clothed by law with necessary power to achieve the purposes of its existence, without resorting to menace

or threat to extort from any corporation subject to its lawful supervision an unreasonable reduction of rates. Nor do we admit that the necessity can ever exist for appellant, or any other corporation, to submit to unjust or unauthorized regulations by the Railroad Commission of Mississippi, when the courts of the land stand ever open, able and willing to protect them from any oppressive action. If in fact it be true, that the so-called re-billing rate establishes an unreasonably low compensation for the transportation of grain and grain products, and the same was inaugurated by order of the commission, then the appellant had a complete and adequate remedy by contesting in a legal way the reasonableness of the rate, and the power of the Railroad Commission to enforce it." As plaintiff in error admits that it actually made the rate in question; that it has never by its own act attempted to annul it; that it has never applied to any tribunal to relieve it of it by contesting it in any legal manner, it is estopped even to complain of it. Plaintiff has also failed to overcome the burden which the law puts upon it to establish the fact that the commerce in question is not wholly intrastate. Even if it were otherwise, even if it were clear that the commerce in question was interstate, we confidently contend that the order in question which simply undertakes, *not to impose a burden, but to remove an unlawful discrimination,* is not illegal. Brannon, in his excellent treatise on "The Fourteenth Amendment," in the chapter in which he treats of "Rights and Privileges under the Fourteenth Amendment," says: "A railroad corporation must serve all alike. It can give

no preference as to serving in the line of its business. It cannot carry for one and refuse another. *It may be compelled to perform proper and equal service for all by mandamus, and it is not thus deprived of property without due process of law or denied equality before the law.* So must other corporations." Citing State *v.* Pacif. Co. 52 La. Ann. 28; Inter-Ocean Pub. Co. *v.* Asso. Press, 184 Ill. 438. In the case last cited the court said: "It has been uniformly held that a telegraph or telephone company is bound to treat all persons and corporations alike, and without discrimination in its business of receiving and transmitting messages. The business of such a company is public in its nature, and a public interest is impressed thereon to such an extent that no discrimination can be made against persons or corporations. (People *v.* Western Union Tel. Co. 166 Ill. 15.) The foregoing authorities entirely dispose of those assignments of "error in which plaintiff claims that the court below erred (1) in holding that the said order of said Railroad Commission was valid, contrary to the contention of said railway company that the same was repugnant to and in violation of clause 3 of sec. 8 of article 1 of the Constitution of the United States, in that the same constituted a burden upon and a regulation of interstate commerce;" and (2) in holding that said order was not in violation of the Fourteenth Amendment of the Constitution of the United States. The allusion to the Fifth Amendment of the Constitution was evidently made through inadvertence as it cannot possibly apply to any aspect of the case as it operates only on the national govern-

ment and not on the States. Spies *v.* Illinois 125 U. S. 166.

A state statute requiring railroad companies to post a printed copy of all rates (including rates subject only to congressional control) and providing penalties for charging higher rates was upheld in *Railroad* v. *Fuller*, 17 Wall 560, the court saying: "It (the statute) only required that the rates shall be fixed, made public *and honestly adhered to*. In this there is nothing unreasonable or onerous. The public welfare is promoted without wrong or injury to the company * * *. It is not in the sense of the constitution in any wise a regulation of commerce. It is a police regulation." See also, *Denver R. R. Co.* v. *Atchison Co.* 15 Fed. 650.

A state statute forbidding discrimination by a carrier in charges for transportation, is not a regulation of interstate commerce when applied to shipments received in the State to points beyond the State. *Providence Co.* v. *Providence*, 15 *R. I.* 303. The court says: "The defendants are only called on to do, under a penalty, precisely what the common law declares it to be their duty to do without the statute; viz., to treat all alike under similar circumstances—a mere police regulation." This opinion is fortified by very many citations. See also Shipper *v.* Pennsylvania R. R. Co. 47 Pa. St. 338.

While this court has made it plain that States can neither "regulate commerce," nor burden it, it has with equal emphasis asserted that they may exercise over it many acts of authority which fall short of either. It was held in the Western Union Telegraph Co. *v.* James,

162 U. S. 650, that a state statute imposing a penalty for lack of due diligence in delivering a telegram is not an unconstitutional interference with interstate commerce as applied to interstate messages, in the absence of legislation by Congress on the subject. In that case it was said that: The statute in question is of a nature that *is in aid of the performance of a duty of the company that would exist in the absence of any such statute*, and it is in nowise obstructive of its duty as a telegraph company." So in this case the order of the Mississippi Railroad Commission was simply in aid of a duty imposed upon the carrier by the general law to "serve all alike"—a duty of equal service which any such corporation may be forced to perform by mandamus without its being "deprived of property without due process of law or denied equality before the law."

The court below held that the commission, to prevent discrimination merely extended the benefit of the existing 3½ cent rate to all shippers, and that in doing so it acted within the power conferred by sec. 4,297 of the Mississippi Code. This view greatly narrows the scope of the question and entirely eliminates many of the questions much discussed by appellant. It eliminates, for instance, the question of the constitutionality of that part of sec. 4,290 which, it is argued, requires the commission in revising tariffs to take into consideration the entire business of the railroad. The commission was not being called on to fix in the first instance a tariff or to judge as to the reasonableness of one submitted to it under sec. 4,290. It finds that the

Company, whose tariff has been approved, and which is not complaining that any tariff rate is too low, have been for a long time, and is now, discriminating in favor of a class of the public, and under the guise of giving a "re-billing" rate of 3½ cents from Vicksburg to Meridian, allows it to be availed of *so as to become in all respects, an open rate*. In short, the jurisdiction of the commission to prevent unjust discrimination is distinct from the power to revise tariffs and pass on their reasonableness as an original proposition. The commission may not have the power to compel the company to put on an extra train, but if such train is being run, it can compel the company to carry all on it upon the same terms. It may not compel a company to put in holiday rates, but it can compel such rates when put in to be given to all alike.

The commission did not undertake to fix a general tariff on grain products. It did not prescribe a local rate graduated according to mileage. The order deals with only *one* commodity, from only *one* point, to only *one* point, and shipped in only *one* way; viz., car-load lots.

The opinion of the court below fully explains wherein the so-called re-billing rate is in fact an open rate in its operation and how the commission, by its order, merely pointed out to all the public the true nature of the transaction, and gave to it what the Company had already given to a favored part of the public.

This whole matter has twice been carefully considered by the Interstate Commerce Commission, and the practice, just such as is here adopted, denounced as a "fiction,"

and the rate called a re-billing rate, as a local rate in reality. See *Chicago, etc., R. R. Co.* v. *Chicago & A. R. R. Co.*, 3 I. C. C. Rep. 4; s. c. 2 Int. Com. Rep., 721; 7 Int. Com. Rep. 240; 9 Ib. 373. This last case is also authority for the proposition discussed hereafter that the fact that the freight is received in large quantities from a certain connecting carrier or shipper does not warrant giving a special rate. Here the A. & V. seeks to give special privileges to the V. S. & P. and its customers.

The giving a re-billing privilege for ninety days to only those who had patronized the V. S. & P. is a gross discrimination. Such discrimination is condemned in the severest language by the decisions. See *Hays* v. *Penn. R. R.* 12 Fed. Rep. 309, and cases cited in note.

The A. & V. can not give a better rate to the V. S. & P. grain than to that brought in by rival carriers. It is liable in damages to the shipper or carrier discriminated against. *Samuels* v. *L. & N. R. R. Co.*, 31 Fed., 57.

Discrimination is defined by Judge Brewer in Wright *v.* U. S., 167 U. S., on page 578, where he says that the purpose of all such acts is "to enforce equality between shippers, and prohibit any rebate or other device by which two shippers shipping over the same line, the same distance, *under the same circumstances of carriage* are compelled to pay different prices therefor."

This case also condemns the giving special rate to one because he has a warehouse, and a switch on a competing line and to meet that advantage. A railroad company can not discriminate in favor of a shipper who is able to

furnish a large amount of freight over another in same business, at least where both ship in carload lots.

*Louisville, etc., R. R.* v. *Wilson*, 18 L. R. A., 105, and many cases cited in notes.

It is true Vicksburg has the river and this is a legitimate advantage in getting rates from the North and West *to* Vicksburg. But the Mississippi river does not flow *from* Vicksburg to Meridian, or parallel to the A. & V., and its presence does not entitle the Vicksburg dealer, who has his grain *in* Vicksburg, to ship it *out* on better terms than a Meridian or other dealer. The A. & V. has no concern where the grain in Vicksburg came from. There must be one rate for all grain, and one rate for all persons.

Where a carrier charges one connecting carrier more than another, the fact that the higher rate is not unreasonable does not relieve the discrimination. *Samuels* v. *L. & N. R. R. Co.*, 31 Fed., 57.

## IV.

**The proof in the record does not uphold the contention that the order in question has had the effect of depriving plaintiff of its prosperity "without due process of law," or has deprived it of "the equal protection of the law."**

So far the argument has proceeded upon the assumption that the only data of fact before this court is that defined by the Supreme Court of Mississippi as above set forth. Now let it be assumed for the sake of the argument, that the data of fact before the court is as wide as plaintiff in error in its brief claims it to be. Even upon that basis

it cannot be demonstrated that plaintiff has by the order in question been forced to conduct any part of its business at loss.

The rate is *prima facie* reasonable under the Mississippi statute, and the fact that the company is now and has been for years carrying all the grain it handles in any manner from Vicksburg to Meridian at 3½ cents, shows conclusively that it is deemed by the company reasonable. Mr. Harvey does not now claim that the rate ought to be more than 5 cents per 100. That is the rate he testifies "was a proper rate." (Transcript, p. 49). The Company had once given a rate of 2½ cents from Vicksburg to Meridian on Texas grain although its share of the freight seems to have been more than that. (Transcript, p. 58.)

It must not be forgotten that this rate is *as to the A. & V. itself* a through rate, *i. e.*, it is for a haul *over its entire line. It goes from terminal to terminal.* The car is put into a through train at Vicksburg and runs without change or switching over the entire line to the other terminal. There is, therefore, a minimum of expense, and the cars are left where most needed. No additional train force is needed because of a through car, and Mr. Harvey himself says that they "haul few, if any, cars out of Meridian empty." It is common knowledge that grain in carloads carries almost the lowest of rates. This fact is recognized in more than one opinion of this court and uniformly by the Interstate Commerce Commission. It is loaded by the shipper and unloaded by the consignee.

It is uniformly held that the commission, being presumably composed of business men, conversant with local

conditions, can better judge as to the reasonableness of rates than the courts. See *Interstate Com. Com.* v. *Louisville R. R. Co.*, 73 Fed., 409. "The state commission is peculiarly fitted to pass on the facts;" *Chicago, etc.* v. *Tompkins*, 176, U. S. 172.

The burden being on the Company to show the rate unreasonable, it must clearly show that this particular rate is, under the existing circumstances so unreasonable as to deprive it of its property without due process of law. The company seeks to do this by showing its interstate earnings and intrastate earnings, and then making a computation as to the costs of moving freight per ton and per mile. It claims that the commission could only look to the earnings from intrastate business. The opinion of the Chancellor clearly shows that while the commission can not take interstate earnings as a *basis* of fixing local rates, it is impossible not to *consider* the total business of the road for some purposes. This is made clear, and the construction sought to be put on *Smythe* v. *Ames*, is shown to be erroneous. Minneapolis &c Co. *v.* Minnesota 186 U. S. 257. But if we grant the rule as claimed, complainants fail, because it is equally true that the Company, to show the unreasonableness, must show the *cost* of doing its local business. This it fails to do. Mr. Harvey and Mr Steele say that they have no data for showing it. See Atlantic Co. *v.* U. S., 76 Fed. 190. State *v.* Seaboard Air Line (Fla.) 37 So. Rep. 314 clearly shows the distinction between considering interstate rates as a basis of fixing domestic rates and for determining the proportion of the

value of the property assignable to domestic business and for other purposes.

When a commission and the officers of a railroad company differ as to the unreasonableness of a rate and there is room for intelligent difference of opinion, the courts will not interfere but will leave it to the test of experience. 23 Am. & Eng. Enc. L. 657; citing 29 Fla. 617; 25 Fla. 310.

The presumption of reasonableness is not overcome except by proof of expenses and receipts during an adequate period. 76 Fed. 186.

Evidence that the rates are lower than that of other points or on other roads is not competent. Conditions may be different. Interstate Com. *v.* Nashville etc., R. R. Co. 120 Fed. 934.

The case must be a clear one to warrant interfering with rate fixed by the commission. *Chicago* v. *Tompkins. supra.*

This case also holds that the net earnings must be shown before the courts can judge of reasonableness. Now appellant contends that the net local earnings, *i. e.*, the receipts from local business less the cost of local business must be the test, and cites *Smythe* v. *Ames*, 169 U. S., 466. This argument is self-destructive to appellant, for Mr. Harvey and Mr. Steele both say that they can not ascertain the cost of the intrastate business. Without this essential information how can it be said that the burden of proof has been met?

If the commission had been fixing a rate in the first instance, and imposing it on an unwilling road, there

would be room for the defense, if established, that the carrying of the grain would be at a positive loss. But on that point we say, first, that this is not the original fixing of a tariff, but the extension of an existing rate voluntarily put in force, and in general use by a class of dealers, and under which all its grain shipped from Vicksburg to Meridian is being carried to all shippers alike; and, secondly, the reasoning and computation to show that there is a loss is fallacious.

Even in the original fixing of rates by a commission, the court will not interfere if the rate fixed gives any compensation at all. *Chicago, etc.* v. *Day*, I. L. R. A., 746.

The question as to reasonableness necessarily involves inquiry as to the present value of the railroad and its equipment. All the authorities hold this to be essential. We pass by, as unworthy of note, the contention of appellant that the total cost exceeds $10,000,000.00. This is made up by adding to the original stock on bonds (whether watered or fictitious is not shown) all the expenditures for way, equipment, interest, etc., during perhaps fifty years. The total stock is $1,050,000.00 and all the bonds $2,190,100.00 *This stock and these bonds* are worth *par* and are not quoted for sale. Transcript p. 14. On this basis, which we submit is fictitious and excessive, the company earns enough to pay the interest on bonds, good dividends on stock, and a large surplus every year over all kinds of expenses and improvements. Transcript p. 90. On the above basis the net earnings for the year ending June 30, 1903, *over and above operating expenses and fixed charges* were $161,313.33, or, in other words,

16% per annum earnings. P. 90. Yet this company rendered its entire property in for taxation at $8,500.00 per mile, or in the aggregate $1,488,421.00. Transcript p. 52. Such returns for taxation are competent and of great value. *L. & N. R. R.* v. *Brown* 123 Fed. 946. On such a basis its net earnings would approximate 30%. The complainant does not come into equity with clean hands under such a showing.

The burden to show unreasonableness is not met where it appears that dividends on stock were computed as fixed charges. 83 N. W. Rep. (Minn.) 60; *Chicago* v. *Day*, *supra*.

In this case the company says that it can not even estimate the present value of the property, and this, although a proper method of valuing railroad property has been pointed out. See Report of Interstate Com. Commission, 1903, p. 30.

Where it was shown that the company under a rate earned only 1½% on original cost, the order fixing it was held not unreasonable. 125 Fed. 680.

The computation by Mr. Harvey (T. p. 28.) to show that grain is carried at a loss, is obviously fallacious. His theory is bad and his arithmetic faulty. He gets his figures from the tabulation, T. p. 43. His item, $2.176 as "expense for freight per freight-train mile" is obtained by dividing the total freight expenses, $598,713.30 by the total miles traversed by the freight trains (or strictly speaking, freight locomotives), viz.: 275,100 miles. But the total freight mileage is not 275,100 miles, but 436,436 miles (T. p. 43) for since the expense of switching applicable

to local freights goes in to help make up the total freight expenses, the switching mileage must be computed in the total freight mileage. Thus we have $598,713.30 divided by 436,436, which gives $1.37 instead of $2,176 as expense per freight-train mile. This multiplied by 140 mileage from Vicksburg to Meridian gives $191.80 as cost of average freight train from Vicksburg to Meridian, instead of $304.64, whereas the average receipt is admitted to be $261.80. Another fallacy in Mr. Harvey's calculation is that the *expense* is computed on a basis of *all kinds* of freight and the *receipts* only on the *grain rate*. The truth is, the haul of through cars of grain costs very much less than the average freight, because it is always in carloads, is loaded by the shipper, unloaded by the consignee, goes from terminal to terminal, without switching and in 10 hours, whereas purely local trains require 15 hours. T. p. 61.

Their arithmetic is no better on the subject of expense per *ton* per mile. The total tonnage for 1902–3 was 646,485 tons. They say that the total expense per ton *per mile* was 9.1 mills. T. p. 59. These figures were gotten by dividing the total freight expense, $598,713.00 by the said total tonnage. This gives about 93 cents representing the cost of hauling each ton. It will be seen that Mr. Harvey admits receiving $1.184 per ton for grain shipments to Meridian. It is regardless of mileage. Now if 93 cents is the average cost of *moving each ton*, and the local rates, then being collected, were much higher than through or re-billing rates, it follows that the local rates were above 93 cents and re-billing rates *were lower*. Hence 70 cents per ton

for a through shipment from terminal to terminal, without delays, switching charges, loading or unloading or other expenses, must be reasonable. Certain it is that the company extends this so-called re-billing rate until it operates as a local rate and takes all the business it can get at that figure. The suggestion that the 3½ cent rate is from the river or wharf and not from the Company's station has no foundation. Again Mr. Harvey states that an average freight train from Vicksburg to Meridian costs $304.64, and that if the rate on all kinds of freight was 3½ cents the company would lose $42.84 on each train, receiving only $261.80 per train. This would entail a loss over actual earnings of only about 16%. (T. p. 28.) Yet it is shown the company after all expenses and maintenance and fixed charges earns 16% on its common stock. Surely if grain which carries the lowest of rates has a rate now so near the actual average of all rates it will not be declared unreasonable.

The argument that the Company can afford the present rate as a re-billing rate because it enables them to get freight cars, is disproved by appellant's own testimony. Even if true, this would not justify discrimination as against private shippers. It might be a good excuse for favoring the V. S. & P. in routing of freight and terminal facilities and interchange of cars, but it cannot justify giving "A" the rate of 3½ cents on grain in his warehouse, or wherever it may be, just because he once brought in a like amount by a certain connecting carrier, and denying to "B" who may have some of the same grain in the same warehouse, the same rate. But Mr. Jones' testimony

that empties were needed and thus procured for out-bound shipments is not borne out by the facts. The A. & V. has more cars per mileage than the average of railroad companies. It is shown that almost no cars leave Meridian going west empty. If they go west full they can come back full. It might well be argued that it is an advantage to appellant to get a shipment to Vicksburg via V. S. & P. if the car can at once be used for the continued shipment over it to Meridian. But the cars are not kept 90 days. The same cars are not used for the extended shipment. Finally we submit that the commission cannot sanction discrimination in favor of a town or shipper because the company has an insufficient number of cars. A lack of sufficient cars or a glut in business may justify delay in shipments, but not discrimination as between shippers.

We have not discussed the point of Meridian being a basing or competitive point and the alleged or hinted-at discrimination against other towns. This is not a freight classification. It is the curing of a discrimination by doing what the Interstate Commerce Commission says in its report (1903 p. 12) it has to frequently do, viz.: reduce tariffs to the basis of rates found to be already granted. No other town is complaining. The A & V. Co. itself recognizes and treats Meridian as a competitive point, and is not complaining on that ground. It has been twice held by the Interstate Commerce Commission that Meridian is properly a competitive point. That question might arise on a general classification, but not in this case.

In conclusion, the question presented is exceedingly important to the public. It involves a comparatively

small amount to the plaintiff in error. If the rate had been put in operation, it would have diminished the Company's revenue only $1495.00 in 1903. The vital question is whether our commission is to be shorn of its power to compel a rate adopted and in force as to *part* of the public to be extended to the *whole* public. The welfare of the community to which shipments are sent is to be considered in fixing a rate. 162 U. S. 194. The main purpose of all acts of legislatures creating commissions is to force equality of rights for all shippers. 168 U. S. 144; 167 Ib. 512; 7 Cyc. 485.

We do not seek, nor did the commission seek to deprive Vicksburg of its advantage as a competing point. We say to Vicksburg and Vicksburg dealers, "You have your river and you are welcome to the lower rates the river, or the roads because of the river, give you *into* Vicksburg, but not to a lower or privileged rate *out of* Vicksburg on shipments from Vicksburg over one of the roads leading into Meridian, and with which neither the river nor the V. S. & P. competes."

We respectfully submit that the judgment of the Supreme Court of Mississippi should be affirmed.

MONROE McCLURG,

C. H. ALEXANDER,

HANNIS TAYLOR,

*Counsel for Defendant in Error.*

# Supreme Court of the United States.

No. 97.—October Term, 1906.

Alabama and Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie, its Sureties, Plaintiffs in Error, *vs.* The Railroad Commission of the State of Mississippi. } In error to the Supreme Court of the State of Mississippi.

[December 17, 1906.]

On November 16, 1903, the Railroad Commission of Mississippi, by written order, directed the Alabama and Vicksburg Railway Company, hereinafter called the Vicksburg company, to put into effect, over its line of road from Vicksburg to Meridian, a flat rate of 3½ cents per 100 pounds on grain and grain products. December 3, 1903, an application was made by the railway company to the chancellor of the Fifth Chancery District of the State to restrain the enforcement of this order. July 11, 1904, a temporary injunction issued on the filing of the bill was dissolved and the bill dismissed. On appeal to the Supreme Court of the State this decree of the chancellor was affirmed, (86 Miss. 667,) and thereupon this writ of error was sued out.

Mr. Justice Brewer delivered the opinion of the Court.

The facts in this case are few. The company made what it called a "rebilling rate" of 3½ cents per 100 pounds on grain and grain products shipped from Vicksburg to Meridian, that rate, however, being applicable only in case of shipments over the Vicksburg, Shreveport and Pacific Railroad, hereinafter called the Shreveport road. Instead of being enforced as solely a rebilling rate, the Vicksburg merchant who received a carload of grain or grain products over the Shreveport road was permitted to either forward it over the plaintiff's road to Meridian, or at any time within ninety days in lieu thereof send a similar carload, no matter whence received, from Vicksburg to Meridian at the same rate. It was in consequence of this effort on the part of the plaintiff to favor shippers who brought grain to Vicksburg over the Shreveport road that the railroad commission made the order declaring that all grain products shipped from Vicksburg to Meridian should be at the same rate, 3½ cents per 100 pounds. The order of the commission merely meant this: If a Vicksburg merchant who received

a carload of grain over the Shreveport road was permitted by the railway company to ship over the Vicksburg road to Meridian any other carload at 3½ cents per 100 pounds, every other merchant in Vicksburg should be permitted to ship at the same rate, although he had had no dealings with the Shreveport company. It is unnecessary to inquire whether the order could be sustained if it appeared that the plaintiff received only 3½ cents as its share of a total rate on through shipments to Meridian from the Northwest by the Shreveport road; for here, under the guise of a rebilling rate, the Vicksburg merchant who dealt with this Western road was given a rate of 3½ per cent on any grain that he might see fit to ship to Meridian. While it may be true that a local railway's share of an interstate rate may not be a legitimate basis upon which a State railroad commission can establish and enforce a purely local rate, yet whenever, under the guise or pretence of a rebilling rate, some merchants are given a low local rate the commission is justified in making that rate the rate for all. It is not bound to inquire whether it furnishes adequate return to the railway company, for the State may insist upon equality, to be enforced under the same conditions against all who perform a public or quasi public service. When voluntarily the Vicksburg company established a local rate of 3½ per cent from Vicksburg to Meridian for those who had within 90 days made a shipment over the Shreveport road, it estopped itself from complaining of an order making that rate applicable to all shipments, no matter whence they arose, and in favor of all merchants, whether those transporting over the Shreveport road or not.

We are not unaware of our decision in *Texas & Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S. 197, in which, on review of the interstate commerce act, we held that a mere inequality of rate was not always proof of undue discrimination, but we were passing upon an act of Congress and seeking to ascertain its intent and scope. There was no intimation that it was not within the power of Congress to prescribe an absolute equality of rate. In the present case we are not construing an act of the State of Mississippi or passing upon the powers which by it are given to the State railroad commission. Those matters are settled by the decision of the Supreme Court of the State, and the question we have to consider is the power of the State to enforce an equality of local rates as between all parties shipping for the same distance over the same road. That a State has such power cannot be doubted, and it cannot be thwarted by any action of a railroad company which does not involve an actual interstate shipment, although done with a view of promoting the business interests of the company. Even if a State may not compel a railroad company to do business at a loss and conceding that a railroad company may insist, as against the power of the State, upon the right to establish such rates as

will afford reasonable compensation for the services rendered, yet when it voluntarily establishes local rates for some shippers it cannot resist the power of the State to enforce the same rates for all. The State may insist upon equality as between all its citizens, and that equality cannot be defeated in respect to any local shipments by arrangements made with or to favor outside companies.

We see no error in the ruling of the Supreme Court of the State of Mississippi, and its judgment is

*Affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*